

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4
5
6 TRANSCRIPT OF PROCEEDINGS
7 Public Hearing
8 January 17, 2008
9 Jefferson City, Missouri
Volume 1

10

11

12 In the Matter of Proposed Rules)
4 CSR 240-3.162 and 4 CSR)
13 240-20.091, Environmental Cost) Case No. EX-2008-0105
Recovery Mechanisms)

14

15 COLLEEN M. DALE, Presiding,
CHIEF REGULATORY LAW JUDGE.

16

17 JEFF DAVIS, Chairman,
CONNIE MURRAY
18 ROBERT M. CLAYTON,
LINWARD "LIN" APPLING,
19 TERRY JARRETT
COMMISSIONERS

20

21 REPORTED BY:

22 KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

23

24

25

1 APPEARANCES:

2 PAUL A. BOUDREAU, Attorney at Law
3 Brydon, Swearngen & England, P.C.
4 312 East Capitol
5 P.O. Box 456
6 Jefferson City, MO 65102-0456
7 (573) 635-7166
8 paulb@brydonlaw.com

9 FOR: Missouri Energy Development
10 Association (MEDA).
11 Aquila, Inc.

12 JAMES M. FISCHER, Attorney at Law
13 Fischer & Dority
14 101 Madison, Suite 400
15 Jefferson City, MO 65101
16 (573) 636-6758

17 FOR: Kansas City Power & Light Company.

18 DIANA VUYLSTEKE, Attorney at Law
19 Bryan Cave, LLP
20 932 Southern Hills Court
21 Eureka, MO 63025
22 (314) 259-2543
23 dmvyulsteke@bryancave.com

24 FOR: Missouri Industrial Energy Consumers.

25 STUART CONRAD, Attorney at Law
26 Finnegan, Conrad & Peterson
27 3100 Broadway
28 1209 Penntower Officer Center
29 Kansas City, MO 64111
30 (816) 753-1122
31 stucon@fcplaw.com

32 FOR: Noranda Aluminum.

33 THOMAS BYRNE, Attorney at Law
34 P.O. Box 66149
35 1901 Chouteau Avenue
36 St. Louis, MO 63103
37 (314) 554-2237

38 FOR: Union Electric Company,
39 d/b/a AmerenUE.

1 LISA C. LANGENECKERT, Attorney at Law
The Stolar Partnership
2 911 Washington Avenue
St. Louis, MO 63101-1209
3 (314) 641-5158

4 FOR: Missouri Energy Group.

5 JOHN COFFMAN, Attorney at Law
871 Tuxedo Boulevard
6 St. Louis, MO 63119
(573) 424-6779
7

8 FOR: AARP.
Consumers Council of Missouri.

9 LEWIS R. MILLS, JR., Public Counsel
P.O. Box 2230
10 200 Madison Street, Suite 650
Jefferson City, MO 65102-2230
11 (573) 751-4857

12 FOR: Office of the Public Counsel
and the Public.

13 STEVEN DOTTHEIM, Chief Deputy General Counsel
14 P.O. Box 360
200 Madison Street
15 Jefferson City, MO 65102
(573) 751-3234
16

17 FOR: Staff of the Missouri Public
Service Commission.

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 JUDGE DALE: We are here today in the
3 matter of Proposed Rules 4 CSR 240-3.162 and 4 CSR
4 240-20.091, Environmental Cost Recovery Mechanisms, Case
5 No. EX-2008-0105.

6 The first preliminary matter I would like
7 to address before we actually take entries of appearance
8 is to address the late-filed comments. We have two
9 different kinds of late-filed comments. One set was filed
10 by Noranda. It was one day late, and it was late due to
11 unavoidable circumstances. And in light of the fact that
12 it was only one day late, I'm going to accept those
13 comments because I believe no party has been prejudiced in
14 any way by them being late.

15 As to all other comments filed after that
16 date, their prepared remarks, et cetera, the comment
17 period ended on January 2nd. If you have filed late-filed
18 comments and want to get them in the record, call a
19 witness, have them read it into the record. At this point
20 only testimony is permitted. No further comments are
21 being allowed. So however you want to handle having
22 copies distributed or just having it already filed in EFIS
23 and having your witness read it, any of those options will
24 work.

25 With that, let's go ahead with entries of

1 appearance, starting with Staff.

2 MR. DOTTHEIM: Steven Dottheim, Post Office
3 Box 360, Jefferson City, Missouri 65102, appearing on
4 behalf of Staff of the Missouri Public Service Commission.

5 JUDGE DALE: Thank you.

6 MR. MILLS: On behalf of Office of the
7 Public Counsel and the public, my name is Lewis Mills. My
8 address is Post Office Box 2230, Jefferson City, Missouri
9 65102.

10 MR. COFFMAN: Appearing on behalf of AARP
11 and the Consumers Council of Missouri, I am John B.
12 Coffman. My address is 871 Tuxedo Boulevard,
13 St. Louis, Missouri 63119.

14 MR. CONRAD: Appearing on behalf of Noranda
15 Aluminum, Stuart W. Conrad, the law firm of Finnegan,
16 Conrad & Peterson, 3100 Broadway, Suite 1209, Kansas City,
17 Missouri 64111.

18 MR. BYRNE: Appearing on behalf of Ameren
19 Electric Company, doing business as AmerenUE, I'm Tom
20 Byrne, 1901 Chouteau Avenue, St. Louis, Missouri 63103.

21 MR. BOUDREAU: Appearing on behalf of the
22 Missouri Energy Development Association and also member
23 company Aquila, Inc., let the record reflect the
24 appearance of Paul A. Boudreau with the law firm of
25 Brydon, Swearngen & England, P.C., 312 East Capitol

1 Avenue, Jefferson City, Missouri.

2 MS. VUYLSTEKE: On behalf of the Missouri
3 Industrial Energy Consumers, Diana Vuylsteke of the law
4 firm of Bryan Cave, 211 North Broadway, Suite 3600,
5 St. Louis Missouri 63102.

6 MS. LANGENECKERT: Appearing on behalf of
7 the Missouri Energy Group, Lisa C. Langeneckert, the
8 Stolar Partnership, LLC, 911 Washington Avenue, 7th Floor,
9 St. Louis, Missouri 63101.

10 JUDGE DALE: Thank you. The Commission has
11 asked that we recess until they are finished with agenda
12 next door. Mr. Dottheim?

13 MR. DOTTHEIM: Judge, if I might approach a
14 procedural matter. As far as reading comments into the
15 record, if we also have them in hard copy, should we
16 provide those if we have copies?

17 JUDGE DALE: I think that would be easier
18 for everyone. If you have copies and can distribute them,
19 I just think it's easier for people to be able to read
20 along. If not, that works, too.

21 MR. DOTTHEIM: Thank you.

22 MR. MILLS: Judge, along those lines, would
23 you like them filed in EFIS or just distributed to the
24 parties that are here today?

25 JUDGE DALE: They will -- if you have them

1 in hard copy here, they should be marked as an exhibit and
2 given to the court reporter and then eventually find their
3 way to EFIS that way. If you have already filed it in
4 EFIS, I don't see any need to refile it.

5 MR. MILLS: Okay. Thank you.

6 JUDGE DALE: And if you -- if you are
7 counsel and you thought you had comments that would be
8 accepted and you have no witness with you, you can
9 yourself be sworn and read the comments into the record as
10 testimony. Any other questions?

11 MR. BOUDREAU: I think just one. I
12 understood your ruling on the comment period being closed,
13 it's now time to take testimony. I think there were some
14 corrections to some comments that were filed by one or
15 more of the parties. I assume that -- that to the extent
16 that they're just corrections to previously filed
17 comments, those will be accepted?

18 JUDGE DALE: Yes, as long as they're not a
19 substantive change. If they're simply corrections, yes.

20 MR. BOUDREAU: Thank you.

21 JUDGE DALE: Anything else before we go off
22 the record? Then we'll go off the record.

23 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

24 JUDGE DALE: Back on the record. Over
25 the -- or during the intermission, counsel have consented

1 to allow Mr. Todd from ACORN to go first, if you'll
2 please -- will you raise your right hand, please.

3 (Witness sworn.)

4 JUDGE DALE: Thank you. If you'll state
5 your name and spell it for the court reporter.

6 JESSE TODD testified as follows:

7 MR. TODD: My name is Jesse, J-e-s-s-e. My
8 last name is Todd, T-o-d-d. First of all, good morning,
9 Honorable Commissioners and Honorable Judge Dale. Good
10 morning to the audience, and I thank you so much for
11 allowing me to speak. Again, my name is Jesse Todd. I'm
12 a member of ACORN.

13 ACORN is adamantly opposed to AmerenUE's
14 request for an environmental cost surcharge. If you, the
15 Public Service Commissioners, approve this surcharge,
16 AmerenUE will be allowed to raise their rates. Their
17 environmental costs may increase while their other costs
18 may decrease. The end effect, AmerenUE will be allowed to
19 charge customers more and increase their profits because
20 of this surcharge. This is an outrage. This is greed.
21 How can AmerenUE be allowed to increase their profits and
22 place this unnecessary financial hardship on customers?

23 ACORN, the largest grass roots community
24 organization for low and moderate income families in the
25 nation, demand that you deny AmerenUE's request for greed.

1 The good is the enemy of the best. Let us all be the best
2 at this moment in time. Thank you.

3 JUDGE DALE: Do any of the Commissioners
4 have questions for Mr. Todd? Thank you, sir.

5 MR. TODD: Thank you.

6 JUDGE DALE: Then we'll resume with Staff.

7 MR. DOTTHEIM: Staff would call as its
8 witness Ms. Lena Mantle. Ms. Mantle has additional
9 comments this morning. I've distributed those comments,
10 and I think Judge Dale, based upon your prior
11 instructions, would you like to have those marked as an
12 exhibit?

13 JUDGE DALE: Yes, please. They'll be
14 Exhibit 1.

15 (EXHIBIT NO. 1 WAS MARKED FOR
16 IDENTIFICATION BY THE REPORTER.)

17 MR. DOTTHEIM: Exhibit 1. I would note
18 that in the comments that the Staff filed on January 2, we
19 included the education and training background of
20 Ms. Mantle along with those comments. The Staff also has
21 this morning present Greg Meyer who, depending upon
22 questions from the Bench, is also available to testify.

23 JUDGE DALE: Then why don't I go ahead and
24 swear both Mr. Meyer and Ms. Mantle at the same time.

25 (Witness sworn.)

1 JUDGE DALE: Thank you. You may proceed.

2 LENA MANTLE testified as follows:

3 MS. MANTLE: Staff would like to start its
4 comments withdrawing its proposed change to 4 CSR
5 240-20.091 Section 5. Environmental cost recovery
6 mechanism or ECRM rates are set to collect revenues to
7 cover the environmental costs incurred since the prior
8 general rate proceeding. The true-up process only looks
9 at whether the rates over or under-collected the intended
10 revenues. Environmental costs are not considered in the
11 true-ups.

12 The rule may -- the rule already restricts
13 the periodic adjustments to be based on environmental
14 costs, and that can be found in 4 CSR 240-20.091(4)(A).
15 And the Commission determines which cost components are
16 included in the ECRM, and that can be found in 4 CSR
17 240-20.091(2)(C). Inserting environmental costs in
18 Section 5 may create confusion. Therefore, Staff
19 withdraws its proposed language.

20 Staff would also like to offer
21 clarification of 4 CSR 240-20.091(5)(B). The purpose of
22 this subsection is to describe how the true-up adjustment
23 is calculated. However, in the current form it is
24 confusing. Therefore, the Staff proposes the following
25 change:

1 (B) The true-up adjustment shall be the
2 difference between the revenue authorized for collection
3 during the true-up period and billed revenues associated
4 with the ECRM during the true-up period. We would suggest
5 removing the language revenue collected and the.

6 The Staff would like to respond to selected
7 MEDA comments. MEDA proposes removing the monthly
8 submission requirement in 4 CSR 240-3.162(5)(C). Based on
9 its belief that it is duplicative with the subsection
10 (5)(E). Staff does not agree that this is duplicative.
11 Subsection C requires the utility to provide the electric
12 utility's actual environmental compliance costs and
13 revenues allocated by rate class and voltage level as
14 applicable consistent with the most recent Commission
15 approved allocation methods and rate design.

16 Subsection (5)(E) requires the utility to
17 provide the difference by rate class and voltage level as
18 applicable between the total environmental revenues
19 collected through base rates and the ECRM and the
20 environmental compliance revenues received and costs
21 incurred. The two subsections are not duplicative.

22 Subsection (5)(C) requests information on
23 environmental costs and environmental cost revenues and
24 how those costs are allocated to the rate classes for that
25 month. Subsection (5)(E) requests information on the

1 difference between the revenues billed and the revenues
2 projected for each month. Changing subsection (5)(E) may
3 reduce the confusion.

4 Staff suggests the following changes to
5 subsection (5)(E) for clarification: The difference by
6 rate class and voltage level as applicable between the
7 total billed ECRM revenues and the projected ECRM
8 revenues. That would require striking some language in
9 the current proposed rule. We suggest striking the word
10 environmental after the word total and inserting billed
11 ECR revenues, striking collected through rate base and the
12 ECRM, and then inserting the projected ECRM revenues and
13 striking the rest of that subsection.

14 As a part of its proposed changes, MEDA
15 included language that would set the return applied to
16 capital environmental costs. Staff recommends adding this
17 language to the proposed 4 CSR 240-20.091(4)(B).

18 The subsection would read: (B) The
19 periodic adjustment shall consist of a comprehensive
20 measurement of both increases and decreases to the
21 environmental revenue requirement established in the prior
22 general rate proceedings plus the additional environmental
23 cost. This next sentence is what we propose adding. The
24 return applied to all capital environmental costs shall be
25 the weighted cost of capital including the return on

1 common equity established in the electric utility's
2 general rate proceeding in which the ECRM mechanism was
3 established.

4 Staff also agrees with MEDA's suggestion to
5 change the date of the rule review date in 4 CSR
6 240-20.091 section 12, from June 30th 2011 to December
7 31st, 2011, to be consistent with 4 CSR 240-3.162 section
8 17.

9 MEDA and several of the investor-owned
10 utilities argue that the investment currently associated
11 with environmental compliance should be treated
12 identically to the procedures outlined in the
13 infrastructure system replacement surcharge or ISRS rules.
14 The Staff does not agree with this argument. Senate Bill
15 179 and Section 386.266.2 clearly authorizes periodic rate
16 adjustments outside of general rate proceedings to reflect
17 increases and decreases in its prudently incurred costs,
18 whether capital or expense, to comply with any federal,
19 state or local environmental law, regulation or rule.

20 Whereas Section 393.1012.1, which
21 establishes the ISRS, makes no mention of increases or
22 decreases in expense. In fact, the language in that
23 section states, a gas corporation providing gas service
24 may file a petition and proposed rate schedules with the
25 Commission to establish or change ISRS rate schedules that

1 will allow for the adjustment of the gas corporation's
2 rates and charges to provide for the recovery of costs for
3 eligible infrastructure system replacement.

4 There's no provision in the ISRS law to net
5 increases or decreases in the expenditures as found in
6 Senate Bill 179. Furthermore, there's no language in
7 Senate Bill 179 that establishes that the capital
8 expenditures for compliance should only be recognized
9 during a future event when another asset is constructed as
10 it is done in ISRS. For these reasons, the Staff believes
11 that an environmental rate base must be established in the
12 general rate proceeding.

13 Staff would also disagree with the comments
14 of MEDA and AmerenUE regarding the burdensomeness of
15 identifying the environmental rate base. It is not the
16 intention of the Staff to require a utility to identify a
17 pump or a fan as a compliance investment. The Staff would
18 suggest that some materiality limit in dollars or specific
19 investment types could be included -- included in the rate
20 base. However, the Staff would argue that whatever
21 agreed-to conditions are posed on the environmental rate
22 base would also apply to the utility when it seeks an ECRM
23 periodic adjustment.

24 Greg Meyer from the Staff is here today to
25 answer any questions you might have with respect to the

1 Staff's remarks regarding the differences between the ISRS
2 and the ECRM as well as any other ratemaking questions you
3 might have.

4 JUDGE DALE: Commissioner Clayton?

5 COMMISSIONER CLAYTON: I'll pass.

6 CHAIRMAN DAVIS: I'll pass back to you,
7 Commissioner Clayton.

8 QUESTIONS BY COMMISSIONER CLAYTON:

9 Q. Ms. Mantle, thank you for your comments. I
10 was going through the written comments that were up here
11 at the Bench when I got in here. It appears that you were
12 following along pretty close to -- in your comments to
13 that sheet, so I kind of want to refer to it.

14 You respond to a number of concerns or
15 issues that were raised by a couple of parties, but it
16 doesn't appear that you responded to all of the comments
17 provided by all of the parties, and I was wondering why
18 that is, or is that just because Staff is not recommending
19 any changes or is it because these are the only changes
20 that you felt necessary? Could you elaborate on these
21 comments?

22 A. These were the comments that Staff had a
23 position on. Other comments speak for themselves, and we
24 believe the Commissioners have enough on record to make a
25 decision regarding those comments.

1 Q. Okay. So the fact that you don't address
2 an issue raised by another party doesn't mean that you're
3 necessarily in favor or opposed to that potential
4 amendment; is that what you're saying?

5 A. That's correct.

6 Q. Okay. Does Staff have any input on issues
7 that were -- perhaps relate to the consumer side of the
8 equation? Does it feel that any of the recommendations by
9 any of the consumer side have any merit at all?

10 A. We started this process off with the FAC
11 rules, and one of the reasons was because the Commission
12 had already heard arguments regarding the consumer
13 protections, and that was the decision in those rules,
14 that they had made for those rules. So rather than go
15 back and restate what was already done and what was
16 already decided, Staff concentrated on any additional new
17 issues. We do believe consumer protections that are
18 provided by the legislation are in the rule.

19 Q. Well, in light of that comment, one of the
20 comments that were provided suggests limiting the
21 application to new environmental rules or limiting the
22 number of environmental rules that would be subject to
23 this. Are you familiar with that comment?

24 A. I believe that was made by AARP.

25 Q. Yeah. And wouldn't that be fairly unique

1 to this rule rather than a fuel adjustment clause?

2 A. One problem that I see with that is we have
3 some environ --

4 Q. First of all, wouldn't that be unique?
5 That issue didn't come up in the fuel adjustment clause
6 case?

7 A. That is correct, it did not.

8 Q. So this is a new issue that has been raised
9 associated with the environmental rule, correct?

10 A. Yes.

11 Q. Okay. And I notice your comments I don't
12 think respond to this particular issue. So this one
13 wouldn't have been decided by the Commission in the
14 future -- or I mean in the past?

15 A. That's correct.

16 Q. Okay. And why is Staff not addressing that
17 issue?

18 A. Well, I don't know why we didn't address
19 it. I can give you our --

20 Q. Do you have a comment on it?

21 A. Yes.

22 Q. Have you thought about it?

23 A. There are some environmental laws that are
24 currently in place that require investment prior to 2008.
25 If it was any new environmental laws, then those

1 investments could not be included in the ECRM.

2 Q. And I'm sorry, forgive me. I'm -- does
3 that mean you agree or disagree with that AARP?

4 A. We disagree.

5 Q. You disagree on that. Okay. This issue
6 probably did come up in the fuel adjustment clause, and I
7 ask you this question, and Mr. Meyer, if you want to put
8 him on the hot seat, don't hesitate to defer to him. I'm
9 happy to do that. On the annual cap, does Staff have a
10 position on that issue?

11 A. We put in our comments that we filed in
12 January, we put our position on that issue. Would you
13 like for me to --

14 Q. Sure, just tell me briefly what it is.

15 A. Okay. Just so I can be consistent, I'd
16 like to --

17 MR. DOTTHEIM: Commissioner, in response to
18 your questions in general, I think I would say that the
19 comments that were filed yesterday, the prepared remarks
20 of AmerenUE witness Mark C. Birk, ECRM rulemaking hearing
21 January 17, 2008, that I believe he will read into the
22 record today, that except for those items that we
23 specifically take issue with, I think we're generally in
24 agreement with those comments.

25 BY COMMISSIONER CLAYTON:

1 Q. Okay. Well, I will -- I certainly haven't
2 read those comments that were filed just yesterday. And
3 Ms. Mantle, I'm not asking for -- just generally speaking.
4 I'm not looking -- I'm not going to -- I'm not looking to
5 catch you in an inconsistency. I'm just trying to get a
6 sense of where Staff stands on each of these issues. So
7 just generally speaking, I want to ask about the annual
8 cap as well as any potential limitations on the deferral
9 that would go beyond that cap.

10 A. How we interpreted the legislation was that
11 the first year a utility would be allowed up to two and a
12 half percent increase; in the second year, an additional
13 two and a half percent. Now, that would only be 5 percent
14 if the first year there was two and a half percent and the
15 second year there was two and a half percent. First year
16 there was one percent, the next year there's two and a
17 half, so it's a total of three, and so forth for all four
18 years. So the maximum that the rates could increase would
19 be 10 percent. The minimum of course is zero.

20 Q. Okay.

21 A. To give you -- if that answers your
22 question on how we envision that?

23 Q. I think it does. That's fine. Now, on the
24 decision of deferral, does Staff -- is Staff arguing for
25 any restriction on the amount of the deferral, the amounts

1 that would go beyond those percentages?

2 A. I'll throw that on to Greg Meyer.

3 MR. MEYER: No.

4 COMMISSIONER CLAYTON: No limitation?

5 MR. MEYER: The deferral, when you
6 calculate the deferral, the deferral only kicks in after
7 you've maxed out the two and a half percent each year.

8 COMMISSIONER CLAYTON: I understand.

9 MR. MEYER: So the deferral would carry to
10 the next case.

11 COMMISSIONER CLAYTON: Okay.

12 MR. MEYER: Could potentially carry until
13 the next rate case and then recovery could be sought.

14 COMMISSIONER CLAYTON: Right. Does Staff
15 see any potential for that deferral being an incredibly
16 high amount that would -- that would potentially be
17 inappropriately high? Or, I mean, is there any
18 circumstance where that deferral account would be an
19 inappropriate deferral in Staff's opinion?

20 MR. MEYER: Well, I think the -- with the
21 safeguards you have are, is that these expenditures that
22 would create these large deferrals are predominantly going
23 to be capital investments, and --

24 COMMISSIONER CLAYTON: That's my -- I'm
25 going to get to that next question, so --

1 MR. MEYER: And that those are going to be
2 related, or hopefully will track to an environmental
3 compliance plan that's filed or that's shared with all the
4 parties. So I could potentially see that, that you would
5 have large investments between -- between rate cases. I
6 don't -- I don't know that -- I think you'd have to look
7 at each individual utility to determine the magnitude of
8 the deferral that could approach -- I mean, for instance,
9 AmerenUE has a very large revenue base and it's going to
10 be able to sustain large amounts of investment to get to
11 the two and a half percent where you start looking at the
12 capital costs for additions. So it's going to be utility
13 specific.

14 COMMISSIONER CLAYTON: Getting to that
15 issue of comparison of the type of money that would go
16 into this rate, and I suppose I'm classifying just into
17 two groups here, your capital expense and then you'll just
18 have your regular -- I assume there are regular expenses
19 that would not be capitalized that could go into that?

20 MR. MEYER: Right.

21 COMMISSIONER CLAYTON: What does Staff
22 expect in terms of a breakdown of the investments that go
23 into these accounts? Is it -- do you see it being a 50/50
24 type of thing, an 80/20, 70/30? Do you see it being
25 100 percent capital? Does Staff have any idea what to

1 expect?

2 MR. MEYER: I suspect that the largest
3 portion of the identified environmental costs either in
4 the rate base -- or I'm sorry, in your base rate
5 calculation or in the future ECRM periodic costs will be
6 driven by capital expense.

7 COMMISSIONER CLAYTON: So a large part, is
8 that 51 percent, would you say, or is that 90 percent?

9 MR. MEYER: I don't have a percentage at
10 this time. I think it's going to be greater than 50,
11 capital versus expense.

12 COMMISSIONER CLAYTON: Does Staff have a
13 position on whether there should be different treatment
14 between a capital expense versus a -- just a regular
15 one-time expense? Is there any difference that we should
16 treat those types of investments in this rule?

17 MR. MEYER: Well, one-time expenses will,
18 because you have the true-up, a one-time expense will be
19 collected and then will be -- but that change will be
20 reflected as a reduction on the next year.

21 So if you truly have a one-time expense,
22 which I hadn't anticipated that, but that would be
23 incurred, if it qualifies for the adjustment, would be put
24 in the adjustment, and then the subsequent true-up
25 periods, that expense will come out because you still have

1 that netting as proposed by Staff.

2 COMMISSIONER CLAYTON: Okay. For either
3 witness, what -- either Staff witness, I guess is what I'm
4 saying, are there any other safeguards that the Commission
5 should consider with regard to encouraging prudent
6 decisions -- or prudent investment decisions on the part
7 of environmental compliance? I say that in light of a
8 number of things. Around here usually prudence reviews
9 are done way after the fact, and potentially you could
10 have a long time between rate cases. I'm just asking, is
11 there anything that is in this rule that provides greater
12 protection for making prudent decisions by the utility?

13 MS. MANTLE: Well, there is the requirement
14 of rate cases, it's every four years, or -- an ECRM cannot
15 be in effect for longer than four years. So there is that
16 provision. It is Staff's belief that before a large
17 environmental cost could be included in an ECRM, it would
18 have to be shown to be in service or used and useful.
19 So that's another protection -- consumer protection
20 that -- that for capital costs that you don't have an
21 expense like you would a fuel adjustment clause.

22 The prudence reviews are required to be at
23 least every 18 months, and the rules do set out a time
24 schedule for how long those prudence reviews will take.
25 And that's one of the reasons we ask for monthly and

1 quarterly data was so that we would have that data as time
2 passes and not wait until it's time to do a prudence
3 review to have that information. Of course, a complaint
4 case, an earnings investigation could always be done, too.

5 COMMISSIONER CLAYTON: There was mention of
6 an environmental plan. Did you mention that, Mr. Meyer?

7 MR. MEYER: Yes.

8 COMMISSIONER CLAYTON: At what point is an
9 environmental plan supplied to the Commission?

10 MS. MANTLE: When the utility requests --
11 first requests an ECRM and then for every rate case after
12 that where it asks to continue or modify its ECRM.

13 COMMISSIONER CLAYTON: Explain to me what
14 Staff's role is going to be when it receives this
15 environmental plan. Is there going to be a situation
16 where either the Staff or the Commission is asked to
17 approve the plan? Do you evaluate prudence at that point,
18 or do you just use it to map compliance as you go down the
19 road?

20 MS. MANTLE: Well, I envision that we would
21 review the plan as best we could at the time. If we would
22 feel that it's not a good environmental plan, we would
23 make proposals to the Commission on how either to get a
24 better environmental plan or the recommendation may be
25 that they not be allowed to have an ECRM because they do

1 not have a good environmental plan.

2 COMMISSIONER CLAYTON: Okay. Can either of
3 you in terms of the types of expenditures that are allowed
4 to be -- excuse me. I'm sorry.

5 Of the type of expenditures that are
6 allowed to be recovered under this rule, first of all, is
7 Staff comfortable with what items would be permissible to
8 be included in the description of those items in this
9 rule? I'm assuming that you're satisfied with how that is
10 defined at this point? I was assuming I was going to get
11 a really quick yes there. Now you're hesitating.

12 MR. MEYER: We didn't write the rule.

13 COMMISSIONER CLAYTON: I beg your pardon?

14 MR. MEYER: We didn't write the law.

15 COMMISSIONER CLAYTON: I was going to say,
16 who wrote the rule?

17 MR. MEYER: I don't --

18 COMMISSIONER CLAYTON: You're talking about
19 the statute, someone else wrote the statute?

20 MR. MEYER: Yes.

21 COMMISSIONER CLAYTON: Did Staff write this
22 rule?

23 MR. MEYER: Yes. Sorry. I misspoke. We
24 haven't really looked at and anticipated what a utility
25 may bring forward for the compliance, and we're not -- I'm

1 not trying to dodge your question, but as technology
2 evolves through this process, there's going to be new
3 types of technology to meet environmental compliance.
4 What will we do to meet the carbon if carbon tax came on?
5 So it's a continually evolving process.

6 COMMISSIONER CLAYTON: Would a carbon tax
7 be included in this? Would that actual tax?

8 MR. MEYER: Not the tax necessarily, but
9 you may do other things to modify compliance. We haven't
10 discussed whether the carbon --

11 Q. Well, it's easy to say, you know, the
12 installation of a scrubber or something that is directly
13 related to environment, but can you give me an example of
14 something that you would anticipate being in dispute, not
15 necessarily by the Staff, but by -- among parties, the
16 type of expenditure that would come up in a dispute that
17 we're going to have to anticipate dealing with?

18 And I throw out something like a carbon tax
19 or the fees associated with a tax. There are expenses
20 that may come up through that that I don't know if those
21 would be included or not. But get away from the easy
22 ones, the easy ones are scrubbers. The easy ones may be
23 other hardware that everyone would agree relates to
24 environmental compliance. What would be on the edge?

25 MS. MANTLE: I think one that would be on

1 the edge would be if a utility switched to a more
2 expensive coal to meet an environmental law, rule or
3 regulation and then the Commission would have to make the
4 determination, was -- should the increased cost of that
5 coal be applied to the FAC or would it be in the ECRM?

6 COMMISSIONER CLAYTON: Does the rule
7 address what would happen in terms of the interplay
8 between different surcharges? Conceivably you'd have --
9 you'd have at least two different surcharges at that
10 point.

11 MS. MANTLE: The rule does require the
12 utility when it files to file which accounts it proposes
13 would go into the ECRM, and it does state that an account
14 can't be -- can't be for an FAC and an ECRM. It has to be
15 one or the other. So the utility has to make the choice
16 when it files, do I -- do I think that this is an expense
17 for a fuel adjustment charge adjustment mechanism or the
18 ECRM.

19 COMMISSIONER CLAYTON: Let's say a decision
20 like that is made and you have the fuel adjustment clause
21 surcharge which is in there, you've got the environmental
22 clause, and a decision like that is made to change the way
23 business is being done. When that change occurs, does
24 Staff make a finding of prudence? Does it approve or
25 disapprove that decision when it is made, or does Staff

1 review prudence within four years down the road
2 potentially?

3 MS. MANTLE: Staff reviews prudence within
4 18 months.

5 COMMISSIONER CLAYTON: Within 18 months?

6 MS. MANTLE: I'm assuming then you're
7 talking about something that the Commission did not make a
8 decision on in the case that set up the environmental cost
9 recovery mechanism or the fuel adjustment charge.

10 COMMISSIONER CLAYTON: I guess the
11 assumption that I'm making is a decision by the company
12 that follows that is after the surcharge is in place.
13 Maybe they make a decision to change the type of fuel
14 that's going to be used. So the fuel adjustment clause
15 goes up. I guess both could potentially go up at that
16 point.

17 MS. MANTLE: Right.

18 COMMISSIONER CLAYTON: What happens if
19 Staff finds that that was an imprudent decision 18 months
20 or 24 months down the road? How does Staff get the relief
21 to penalize a company or address that in rates? How does
22 that happen?

23 MS. MANTLE: There is a prudence review,
24 and I will ask Greg if that would be designated when they
25 designate which account goes into whether -- either the

1 FAC or the ECRM.

2 MR. MEYER: Well, I'll answer your
3 question, but let's back up, too. Let's suggest that they
4 go -- with your example that you're working on, that they
5 go to a higher price coal but they don't have a fuel
6 adjustment clause, that the -- that the Commission has
7 found that this utility doesn't qualify for a fuel
8 adjustment clause, and then the utility turns around and
9 says, well, the reason I'm paying more for coal now is
10 because I'm in compliance with a -- with an environmental
11 rule.

12 I could foresee that you would be presented
13 with a -- with an argument that would say that's not an
14 environmental cost mechanism. That should have been --
15 that's more properly reflected in a fuel adjustment
16 clause, which you found not to be appropriate for this
17 utility.

18 So I mean, when you were playing the
19 example, you were just painting off or using both
20 mechanisms as plausible recovery mechanisms. You might
21 actually find that a utility doesn't qualify for a fuel
22 adjustment clause and then would have to address whether
23 an increase in coal expense for compliance purposes should
24 be included in the ECRM or not.

25 COMMISSIONER CLAYTON: Can you give me an

1 idea of -- does Staff have a position on these fringe
2 issues or is it just deferring judgment until the time
3 they come up? I mean, have you-all compiled a list of
4 things that you'd think would be included or not included
5 or what you anticipate the Commission should consider?

6 MR. MEYER: We haven't compiled a list to
7 date, no.

8 COMMISSIONER CLAYTON: Does Staff believe
9 that if we implement this rule, that there is the
10 potential that utilities that use the rule have too good a
11 chance to be earning beyond their authorized rate of
12 return?

13 MS. MANTLE: That's a loaded question. I
14 believe there's a potential for them to earn more than
15 they're authorized. Now, whether this will be the cause
16 of it or not, I don't -- but there is the potential there.

17 COMMISSIONER CLAYTON: Well, in your
18 experience of auditing utilities, working with utilities,
19 I'm assuming these expenditures are going to be quite --
20 it could be quite significant. Investments could be quite
21 significant, and the surcharge potentially could be
22 significant, relatively speaking.

23 Does Staff believe that the potential to
24 earn beyond an authorized rate of return within that
25 four-year window between rate cases, is the potential

1 greater with an environmental clause than with a fuel
2 adjustment clause?

3 MR. MEYER: I'm not sure that I can tell
4 you which one has a greater possibility.

5 COMMISSIONER CLAYTON: You can tell me.

6 MR. MEYER: I don't know that I know the
7 answer.

8 COMMISSIONER CLAYTON: Well, let's take --
9 take this example. You can do -- do either/or, and then I
10 want to ask the question, if both surcharges were in
11 place, does that change your answer?

12 MR. MEYER: Well, obviously any clause --
13 any time you have a mechanism that adjusts rates in
14 between rate cases, the possibility that a utility can
15 overearn is enhanced.

16 COMMISSIONER CLAYTON: It goes up?

17 MR. MEYER: Right.

18 COMMISSIONER CLAYTON: There's a greater
19 chance of that going up?

20 MR. MEYER: Because absent the clause, the
21 utility has to manage all of its costs and all of its
22 revenues. You've now dissected a portion of its
23 operations and said that it can increase its rates in
24 between rate cases to cover those expenses. You -- you --
25 there's no -- there's no down side risk to that. The

1 possibility for them to overearn, you've enhanced that
2 possibility. That's just a given.

3 COMMISSIONER CLAYTON: Okay. And is that
4 the case -- let's make this assumption, that all of the
5 expenditures placed in the ECRM are capital expenditures,
6 that you don't have any one-time expenses, so we avoid the
7 issue of an expense being outside of the test year
8 circumstance. You've got 100 percent of the expenditures
9 are capital, and those are potentially going to go into
10 the rate base in the next rate case, correct, if they're
11 prudently incurred?

12 MR. MEYER: They go into rate base as soon
13 as they --

14 COMMISSIONER CLAYTON: They go into rate
15 base immediately?

16 MR. MEYER: Correct.

17 COMMISSIONER CLAYTON: Okay. Now, and then
18 depreciation also kicks in at that point, and the
19 accounting is set up to where you have the investment
20 balance and the accumulated depreciation balance; is that
21 right?

22 MR. MEYER: Right.

23 COMMISSIONER CLAYTON: All right. So
24 potentially in that circumstance, ratepayers are going to
25 get credit for that investment at some point through the

1 reduction of rate base down the road?

2 MR. MEYER: Well, but it hasn't -- it
3 hasn't been included in the revenue requirement
4 calculation. Until it's included -- once you include it
5 in the revenue requirement calculations, every day
6 subsequent to that calculation that investment is -- is
7 less value -- has less value than the day that you put it
8 in the rates, barring no addition to the investment. I
9 mean, they want -- after you establish rate base in a rate
10 case, with no additions, that rate base is lower the next
11 day, so that the earnings are over.

12 COMMISSIONER CLAYTON: Let me ask the
13 question this way. I may get caught up. I tend to get
14 easily confused in accounting issues.

15 But definitely you would be increasing cash
16 flow for a utility with the addition of this surcharge
17 regardless of what the investment is?

18 MR. MEYER: Correct.

19 COMMISSIONER CLAYTON: So the cash flow of
20 the company is going to go up, the revenue of the company
21 is going to go up. Do the earnings of the company also go
22 up?

23 MR. MEYER: Absent not having it?

24 COMMISSIONER CLAYTON: Yes. But assume
25 that it's 100 percent capital, I guess is what I'm saying.

1 MR. MEYER: Well, but when you have the
2 rate mechanism, capital expenditures now equate to
3 revenues to the company, and that will --

4 COMMISSIONER CLAYTON: But not necessarily
5 earnings, okay?

6 MR. MEYER: Right. But -- yeah, I think
7 your earnings will go up. I don't know that they will go
8 up beyond -- I can't tell you that they will go up beyond
9 what your authorized return is, because I don't know all
10 the factors. You have to look at all the factors.

11 COMMISSIONER CLAYTON: But it's the
12 earnings that you'd have to look at to determine whether
13 they're earning greater than their authorized rate of
14 return. It's not just revenues, I guess is my point.
15 Revenue is one of the factors there.

16 MR. MEYER: You look at all the -- you look
17 at all the operations, all the costs to operate the
18 utility with the return on the investment and the taxes
19 and all the operating expenses. Then you look at the
20 revenue stream and you see if it's going to create -- if
21 it generates the return that you put into the rate base.

22 COMMISSIONER CLAYTON: Does Staff believe
23 that there should be any study of the earnings of a
24 company either before or during the implementation of an
25 ECRM, notwithstanding prior Commission decisions, I guess?

1 MR. MEYER: It's our opinion that you get
2 the study when you have a general rate proceeding that
3 establishes the ECRM or not. We believe we're precluded
4 between the periods.

5 COMMISSIONER CLAYTON: You don't believe --
6 you think the law doesn't permit you to do that study; is
7 that what you're saying?

8 MR. MEYER: Well, if we find that -- if we
9 would find that we believe the utility was overearning,
10 we'd file a complaint.

11 COMMISSIONER CLAYTON: How would you know
12 unless you're doing a study?

13 MR. MEYER: Well, in the rules is a section
14 on surveillance, and -- so we will have the data to track
15 the utility to determine if we believe they're
16 overearning.

17 COMMISSIONER CLAYTON: How detailed is that
18 surveillance? How deep does it go? Is it a matter of
19 just reviewing an SEC filing, or is it doing --

20 MR. MEYER: No. It's income statement,
21 rate base and revenues. It's the same basis that we would
22 use today to determine whether we believe the Staff should
23 initiate a complaint against a utility. In fact, it's
24 probably even more detailed.

25 COMMISSIONER CLAYTON: But how often do you

1 conduct those studies right now? I mean, that's not
2 something that we're necessarily aware of up on the ninth
3 floor, I don't think.

4 MR. MEYER: Right.

5 COMMISSIONER CLAYTON: We don't know that,
6 do we?

7 MR. MEYER: No.

8 COMMISSIONER CLAYTON: Right. I mean -- so
9 how often does that occur, I guess?

10 MR. MEYER: We -- I haven't -- I didn't get
11 a chance to visit with the person, but we have a person in
12 the auditing department that monitors the surveillance.

13 COMMISSIONER CLAYTON: For each utility or
14 is there a person for each utility?

15 MR. MEYER: I believe we only do the
16 electric and gas, and I think she -- there's just one
17 person there.

18 COMMISSIONER CLAYTON: One person who does
19 all of them?

20 MR. MEYER: Well, it's just a matter of --
21 once you set up the template it's just a matter of
22 inputting data that's provided I believe quarterly.

23 COMMISSIONER CLAYTON: Does Staff have a
24 threshold that it considers whether certain actions are
25 required, certain actions meaning a complaint to reduce

1 rates, to instigate a rate case versus maybe something
2 that triggers additional surveillance? Is it a certain
3 percentage over authorized rate of return? Is it 50 basis
4 points, 100 basis points? Is it one basis point?

5 MR. MEYER: It's a combination of the fact
6 that we -- that we're -- different auditors are directly
7 involved with different utilities and know fairly well or
8 can at least have an idea where that utility is earning.
9 We have to mesh that against, though, the current
10 workload. Obviously before we would initiate complaints,
11 we would look at the current rate case workload for the
12 Staff to determine if it would indeed be possible to
13 initiate a complaint.

14 COMMISSIONER CLAYTON: All right. So if
15 you're not busy, then what -- what -- you know, what
16 percentage basis points would it be?

17 MR. MEYER: We don't have a basis point.

18 COMMISSIONER CLAYTON: Okay. So what
19 criteria do you use?

20 MR. DOTTHEIM: But it wouldn't be a
21 situation where the company was, at least in our view,
22 marginally overearning.

23 COMMISSIONER CLAYTON: Give me -- I'm
24 trying to find out what's marginally mean. Give me an
25 idea what's --

1 MR. DOTTHEIM: We would be observing on
2 a -- on a regular basis the earnings of the company, and
3 if we thought there was reason to seek even additional
4 information, we would seek additional information. I
5 don't know that there's any -- you know, I'll turn it back
6 to Greg -- that there's any one particular trigger to
7 that. It's something that depending upon the situation,
8 would cause us to give that particular company greater
9 scrutiny over a period of time and possibly cause us to
10 put auditors into the field.

11 COMMISSIONER CLAYTON: So basically, you
12 have one person that reviews the statements, what is it,
13 statement of cash flows? What were the statements that
14 you referred to earlier?

15 MR. MEYER: Called surveillance reports.

16 COMMISSIONER CLAYTON: Surveillance
17 reports. You've got one person looking at those reports,
18 and they make sure that the utility or that all Missouri
19 electric and gas utilities are not earning too high over
20 their authorized rate of return. Is it fair to say that
21 at some point if they are earning greater than what their
22 authorized rate of return is, at some point it triggers
23 additional study or scrutiny, I think is what Mr. Dottheim
24 said?

25 MR. DOTTHEIM: Yes.

1 COMMISSIONER CLAYTON: And then the next
2 step you do, you dig into that, you verify how high. So
3 if a utility's earning fifteen percent, is that high
4 enough for Staff to file a complaint. Their authorized
5 rate of return is 10. At 15 percent, would you file a
6 complaint?

7 MR. MEYER: At 15 percent, we would
8 initiate a detailed investigation.

9 COMMISSIONER CLAYTON: How about 14?

10 MR. MEYER: You -- you can -- you can keep
11 throwing out these percentages. I don't know at what
12 point we would trigger. I just don't have -- I don't make
13 those decisions.

14 COMMISSIONER CLAYTON: Who makes those
15 decisions?

16 MR. DOTTHEIM: We would be looking at a
17 situation such that if one thing happened that would throw
18 the situation the other way, you wouldn't have a complaint
19 case that would just disappear. We would be looking for a
20 situation where we thought that the company was truly
21 earning in excess situation and not one or two items going
22 south or markedly changing.

23 COMMISSIONER CLAYTON: So you add
24 additional evaluations, and then you look at -- maybe
25 there's something coming up on fuel costs. I mean, you

1 put some thought into what you think the next 12 months is
2 going to be bring -- are going to bring, correct, the next
3 year, something like that?

4 MR. MEYER: That's done through our further
5 investigation in the utility. We ask the utility, what is
6 it -- what is it in this year that we studied that was
7 unusual, and what is it in the next 12 months that you
8 would anticipate for further future expenditures and
9 costs.

10 COMMISSIONER CLAYTON: The only reason I'm
11 getting into this is because if there is that potential,
12 then -- and your response was rather than dealing with
13 overearnings in the rule that rely on the Staff for its
14 regular surveillance, we don't necessarily know what that
15 means. Staff is an independent entity, has whatever
16 criteria, and that's not clear. It sounds like it's very
17 subjective.

18 MR. DOTTHEIM: I should also mention, I
19 think this -- and Greg and Lena will correct me, but as
20 part of the fuel adjustment clause, we were able to
21 effectuate the greater surveillance. Part of rules are
22 surveillance. What we get from the companies is on a more
23 advanced basis. So that is part of the process also.
24 Now --

25 MS. MANTLE: I would add to that, it's not

1 just supplied to Staff. It's submitted to, say, OPC and
2 others as provided in Section 9 through 11, which I think
3 are the intervenors in the previous rate case.
4 So it isn't just Staff that's looking at -- that gets
5 these reports.

6 COMMISSIONER CLAYTON: How many parties
7 have the ability to file an overearnings complaint,
8 though?

9 MS. MANTLE: I've never seen anyone besides
10 Staff file one.

11 COMMISSIONER CLAYTON: At least statutorily
12 authorized?

13 MR. DOTTHEIM: Public Counsel has also
14 filed excess earnings complaint cases against utilities
15 regulated by the Commission.

16 COMMISSIONER CLAYTON: I think the notes
17 suggest that, Mr. Meyer, you are here also, that you can
18 provide some testimony that would potentially address the
19 difference between an ECRM and an ISRS or an ISRS, again,
20 the infrastructure surcharge; is that correct?

21 MR. MEYER: Yes.

22 COMMISSIONER CLAYTON: Today's your lucky
23 day. Can you tell me with several years experience with
24 an ISRS, the person, that one person sitting in that
25 office downstairs looking at all of the statement of cash

1 flows or surveillance reports, are those surveillance
2 reports part of the ISRS as well? Are overearnings
3 analysis going on with the ISRS surcharge right now as you
4 suggest with ECRM?

5 MR. MEYER: There's not a specific analysis
6 done because of ISRS, no, to my knowledge.

7 COMMISSIONER CLAYTON: And is that just
8 because the rule doesn't require it or because Staff
9 doesn't have enough people or this is a busy time of the
10 year or --

11 MR. MEYER: Well, the surveillance is
12 provided by the gas utilities, but it's not provided as a
13 result of the ISRS.

14 COMMISSIONER CLAYTON: Okay. So somebody's
15 reviewing those surveillance reports?

16 MR. MEYER: That's correct.

17 COMMISSIONER CLAYTON: And has Staff been
18 in a position to evaluate whether or not any of the gas
19 utilities are overearning with the implementation of ISRS?

20 MR. MEYER: It hasn't been brought to my
21 attention that a gas utility has overearned because of
22 ISRS.

23 COMMISSIONER CLAYTON: But is somebody
24 looking at it?

25 MR. MEYER: To the extent that they're

1 looking at the surveillance, yes. I don't know that
2 they're specifically looking at the surveillance and
3 saying because of the ISRS are they overearning. There's
4 not as many opportunities for a gas utility to overearn
5 because they don't -- they don't have much involvement in
6 off-system sales.

7 COMMISSIONER CLAYTON: Okay. Okay. Now
8 that -- I understand that. Now, potentially could you
9 have a gas utility having both an ISRS and an ECRM?

10 MR. MEYER: I suppose so, yes.

11 COMMISSIONER CLAYTON: I think the statute
12 authorizes gas utilities to use it?

13 MR. MEYER: Right.

14 COMMISSIONER CLAYTON: Does this rule allow
15 for gas -- does it have applicability to gas, water and
16 electric?

17 MS. MANTLE: This rule as currently written
18 is only electric.

19 COMMISSIONER CLAYTON: Only electric. I'm
20 sorry. I blame that on the judge.

21 Last question area relates to risk.
22 Mr. Meyer, you suggested that these surcharges shift risk
23 when you were discussing inclusion of investment in rate
24 base and how rates are calculated. Who is it -- risk is
25 being shifted from the company to the consumer, would you

1 agree with that?

2 MR. MEYER: Yes.

3 COMMISSIONER CLAYTON: And does the -- with
4 that shift of risk, does the consumer ever get any benefit
5 in the ratemaking process from that shift of risk that
6 they will be bearing?

7 MR. MEYER: There's a provision that --
8 that that type of risk should be addressed within the rate
9 of return that's authorized by the Commission and
10 presented to the Commission.

11 COMMISSIONER CLAYTON: Do you have any idea
12 what the impact should be in terms of a reduction in risk?

13 MR. MEYER: No. That would be probably
14 more addressed to our financial analysis department.

15 COMMISSIONER CLAYTON: So -- but basically
16 the consumer should benefit through a reduction in the
17 return on equity component of the ratemaking process?

18 MR. MEYER: With the mechanism versus
19 without it?

20 COMMISSIONER CLAYTON: Yes.

21 MR. MEYER: I believe so, yes.

22 COMMISSIONER CLAYTON: And there's no rule
23 of thumb on -- or formula that would reduce that?

24 MR. MEYER: I wouldn't know what that would
25 be, no.

1 MS. MANTLE: The statute does say the
2 Commission may take into account any change in business
3 risk to the corporation resulting from the implementation
4 of the adjustment mechanism. In setting the corporation's
5 allowed return in any rate proceeding, in addition to
6 other changes in business risk experienced by the
7 corporation, and that would be in the rule also. It says
8 the Commission may do that.

9 COMMISSIONER CLAYTON: Are there -- are
10 there -- says the Commission may take that into
11 consideration?

12 MS. MANTLE: That is correct.

13 COMMISSIONER CLAYTON: Does the statute say
14 we shall implement an ECRM or is it may implement?

15 MS. MANTLE: It's may implement.

16 COMMISSIONER CLAYTON: And are there any
17 other components of the ratemaking formula where that risk
18 would be reflected as a potential benefit to consumers in
19 the process, other than that one number?

20 MR. MEYER: I'm sorry. I was talking
21 with my counsel. What number are we talking about?

22 COMMISSIONER CLAYTON: That's all right.
23 You can finish up.

24 MR. MEYER: No. I'm done with him.

25 COMMISSIONER CLAYTON: I'm sure you're

1 ready to be done with me.

2 MR. MEYER: Is that a question?

3 COMMISSIONER CLAYTON: Are there any
4 other -- no, it's not a question. Don't get cocky.

5 Are there any other components of the
6 ratemaking process where the consumer gets an offsetting
7 benefit for the risk that the consumer will be bearing
8 with the implementation of an ECRM other than ROE? Are
9 there any other components in that formula where the
10 consumer can get an offset that addresses that increase in
11 risk to the consumer?

12 MR. MEYER: Probably not specifically, and
13 not that I can recall specifically in a ratemaking
14 formula, but I do believe you have the ability to share
15 the ECRM, if you so desire.

16 COMMISSIONER CLAYTON: What do you mean by
17 that?

18 MR. MEYER: Assign a percentage of it to
19 the utility to not be recovered and then recover a portion
20 of it through the ECRM also.

21 COMMISSIONER CLAYTON: So you put a portion
22 in base rates and a portion in -- is that what you're
23 suggesting, a portion in base rates, portion in the
24 surcharge?

25 MR. MEYER: Correct.

1 COMMISSIONER CLAYTON: Do you believe
2 that -- that's a more appropriate way of doing it than
3 just 100 percent in surcharge?

4 MR. MEYER: I would think you'd have to
5 just look at the circumstances of when the ECRMs are
6 approved.

7 COMMISSIONER CLAYTON: I thought you were
8 going to say that.

9 MS. MANTLE: I might add that with the
10 proposed version of the rule, we ask for net increases and
11 decreases to be looked at. That allows to take into
12 consideration depreciation and property tax, other things
13 that may have decreased versus other parties who have --
14 have other opinions on what that should be. So that
15 netting of cost could benefit the consumer also.

16 COMMISSIONER CLAYTON: The netting?

17 MS. MANTLE: Yes, because it would take
18 into account some of the decreases in the cost.

19 COMMISSIONER CLAYTON: Okay. So aside from
20 the ROE, are there any other benefits that the customer
21 would receive by implementation of this ECRM? Do they get
22 a cleaner world? Do they get less of a carbon footprint,
23 that type of thing?

24 MR. MEYER: I was going to say they should
25 be --

1 COMMISSIONER CLAYTON: Or are those things
2 going to happen regardless? I mean, those things may be
3 mandated and they're going to happen regardless. That's
4 what I'm trying to --

5 MR. MEYER: Right. Most of this compliance
6 is going to be done. It's just that there has been a rate
7 mechanism suggested that they can deal with those costs in
8 between rate cases, you know. Except for the reduction in
9 the return on equity, I can't think of anything else in
10 the ratemaking concept besides the sharing, and I think
11 it's important what Ms. Mantle brought up, the netting. I
12 think that's very important. That's another consumer at
13 least advantage, that I don't know that --

14 COMMISSIONER CLAYTON: Protection?

15 MR. MEYER: Protection.

16 COMMISSIONER CLAYTON: So I mean, this is
17 work that's going to be done, it's an investment that's
18 going to be done regardless of whether this rule is in
19 place; would you agree with that statement?

20 MR. MEYER: That's the purpose of the rule,
21 right.

22 COMMISSIONER CLAYTON: And it's not -- it's
23 not going to change the timing of the investment
24 necessarily, the only change is when the recovery begins?

25 MS. MANTLE: It may change the timing if a

1 utility decides to install something earlier than required
2 by the law.

3 COMMISSIONER CLAYTON: Earlier than
4 mandated.

5 MS. MANTLE: They may be able -- when
6 there's a deadline, say, of 2011 and every utility in the
7 country waits until the last minute to start, then the
8 costs to implement any of those types of measures would be
9 greatly increased. Laborers would be harder to find, so
10 forth. So a utility that might start earlier could
11 perhaps have lower cost installing the technology.

12 COMMISSIONER CLAYTON: I'll pass to
13 Commissioner Jarrett. Thank you.

14 COMMISSIONER JARRETT: Thank you. I just
15 had one question regarding relating to the ISRS. Could
16 you elaborate on Staff's position that procedures outlined
17 in the ISRS rules, I guess, aren't adequate or wouldn't --
18 wouldn't be appropriate in the context of the
19 environmental rules? Can you elaborate on that, on why
20 the ISRS procedures are not adequate?

21 MR. MEYER: Well, the way we interpreted
22 179 is that it said increases and decreases in expenses
23 and capital costs. To effectuate that, you have to -- in
24 our opinion, you have to identify an environmental rate
25 base that exists when you set rates in the general rate

1 proceeding.

2 That language, the increases and decreases
3 is not present in the ISRS language and in the ISRS
4 process, all that's done is the old investment is netted
5 against the new investment. And in this way, in order to
6 measure the increases and decreases that have occurred, in
7 either their capital expenses are -- or other expenses is
8 to establish this base up front in a rate case and then to
9 track that and use that as the -- the beginning number or
10 the base number for which the two and a half percent can
11 then be applied for the new environmental compliance
12 costs.

13 COMMISSIONER JARRETT: Okay. Ms. Mantle,
14 any elaboration beyond that?

15 MS. MANTLE: No, sir.

16 MR. MEYER: One other thing. ISRS just
17 deals with capital expenditures. This legislation deals
18 with both expenses and capital expenditures. The other
19 argument is that to establish the environmental rate base,
20 as I think you've read in some comments, could be
21 burdensome, and as Ms. Mantle had said earlier, we don't
22 believe that to be the case. We think a workable solution
23 can be developed in the context of a general rate
24 proceeding where an ECRM would be proposed for each
25 company at the time they file their rate proceedings to

1 establish what that environmental rate base should be.
2 We're not looking for fans or pumps or drains, I'm sorry,
3 to be included. They're not of a significant investment
4 dollar that would require identification.

5 COMMISSIONER JARRETT: All right. Thank
6 you. That's all I have, Judge.

7 JUDGE DALE: Thank you. Chairman?

8 CHAIRMAN DAVIS: All right. Mr. Meyer,
9 without going into any -- any individual company's highly
10 confidential information, hypothetically speaking, let's
11 say you have a nuclear power plant like Callaway. What's
12 rate base -- what's environmental rate base?

13 MR. MEYER: For the nuclear facility?

14 CHAIRMAN DAVIS: Uh-huh. Or you can pick a
15 coal plant and --

16 MR. MEYER: I'm not that familiar with the
17 technologies that are available to meet environmental
18 compliance. A coal plant --

19 CHAIRMAN DAVIS: Okay. Use a coal plant.

20 MR. MEYER: One thing that jumps out at me
21 is scrubbers. Okay. So you install scrubbers in the
22 power plant, that would be environmental compliance.

23 CHAIRMAN DAVIS: Baghouses?

24 MR. MEYER: Baghouses, right. I'm sure
25 there's other technologies out there. I'm just not -- I'm

1 not up to speed on all of those at this time.

2 CHAIRMAN DAVIS: Okay.

3 MR. MEYER: Those are the types of
4 facilities that we would be looking for to be identified.

5 CHAIRMAN DAVIS: Judge, I don't think I
6 have any more questions for Mr. Meyer or Ms. Mantle.

7 JUDGE DALE: Thank you. Does Staff have
8 anything else to add?

9 MR. MEYER: I guess there is one, and that
10 is, there's a dispute among some of the parties about the
11 number of filings should be made each year. The rule as
12 developed and presented to you today suggests that there's
13 two filings each year, one which is in context with a
14 true-up and then another one that the utility can file at
15 their own discretion.

16 It's our belief, it's the Staff's belief
17 that those -- that is a sufficient number given the fact
18 that we believe that the major driver of these periodic
19 adjustments will be capital investments and that two
20 filings within the year should be sufficient to capture
21 those additional capital investments to meet the
22 compliance rules.

23 JUDGE DALE: Thank you. It is now
24 12 o'clock. Let us break until 1:15, and we will come
25 back for MEDA and Aquila. Off the record.

1 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

2 JUDGE DALE: Let's go back on the record.

3 And we are ready to hear from MEDA slash Aquila.

4 MR. BYRNE: Ameren.

5 JUDGE DALE: Ameren. Okay.

6 MR. BYRNE: Not Aquila. AmerenUE.

7 MR. BOUDREAU: Just for clarification, I
8 entered an appearance on behalf of both MEDA and Aquila,
9 but only Mr. Wood will be testifying on behalf of MEDA.
10 I'm not going to offer a witness for Aquila.

11 JUDGE DALE: Okay.

12 MR. BYRNE: And AmerenUE has a separate
13 witness.

14 JUDGE DALE: See, I wasn't making it up.
15 Mr. Wood, if you'll raise your right hand.

16 (Witness sworn.)

17 JUDGE DALE: Thank you. If you'll give
18 your name and spell it for the court reporter and then
19 proceed.

20 WARREN WOOD testified as follows:

21 MR. WOOD: Warren Wood, W-a-r-r-e-n,
22 W-o-o-d. I first have two very small items. One is a
23 spelling thing that should probably be noted in the rule,
24 and that is under 4 CSR 240-20.091(2)(H), at the end of H
25 refers to cost identified as an environment's cost be

1 recovered. I believe that should probably be
2 environmental. Okay. Minor thing.

3 And then a consistent -- an inconsistency
4 between the two rules that I hadn't seen anybody catch and
5 we didn't see until a couple days ago, and that is that in
6 3.162(16) doesn't have any provision for a waiver or
7 requirement for a hearing in order to have a waiver.
8 20.091, Section 13 specifies an opportunity for a hearing
9 in order to have a waiver.

10 I have prepared remarks. I would like to
11 provide my opening remarks and then simply propose that my
12 further comments, which are rather technical, be accepted
13 as an exhibit. We've provided copies and prepared remarks
14 to all the parties here, and I have additional copies if
15 needed.

16 JUDGE DALE: We can refer to that as
17 Exhibit 2.

18 (EXHIBIT NO. 2 WAS MARKED FOR
19 IDENTIFICATION BY THE REPORTER.)

20 MR. WOOD: If anybody needs additional
21 copies, Mr. Boudreau has several for distribution. Okay.

22 Chairman and Commissioners, may it please
23 the Commission? My comments today are on behalf of the
24 Missouri Energy Development Association, also known as
25 MEDA. The purpose of MEDA is to develop, organize and

1 promote measures that will advance the ability of
2 investor-owned utilities to build, maintain, protect and
3 provide the utility infrastructure and services that are
4 critical to the economic well-being of Missouri business
5 and the health and safety of Missouri citizens.

6 Missouri's electric utilities along with
7 electric utilities across the country are at the beginning
8 of a major infrastructure building period. This
9 infrastructure is necessary to provide the increasing
10 amounts of energy customers are demanding and to meet
11 stricter environmental requirements mandated by state and
12 federal law.

13 The increasing cost of this infrastructure
14 and the increasing expenses of utility operations have
15 already caused electric utility rates to increase and will
16 cause additional rate increases in the short and long
17 term.

18 The factors causing these rate increases
19 are well known by many groups other than MEDA.
20 Policymakers interested in researching this topic further
21 are referred to a June 2006 report prepared by the Brattle
22 Group for the Edison Foundation entitled Why Are
23 Electricity Prices increasing - An Industry Wide
24 Perspective, and the following Edison Electric Institute
25 Publications: Straight Answers About Rising Electricity

1 Prices, July 2006; Rising Electricity Costs: A Challenge
2 For Consumers, Regulators and Utilities, May 2006; and
3 Behind The Rise in Prices - Electricity Price Increases
4 Are Occurring Across The Country Among All Types of
5 Electricity Providers. Why? July/August 2006.

6 Also, regulatory proceedings in other
7 states illustrate these factors. Connecticut Light &
8 Power and United Illuminating, two utilities that went
9 before their Connecticut Energy Advisory Board with their
10 joint integrated resource plan last week, noted their
11 rates are likely to remain high because of external forces
12 that the utilities have no control over, namely natural
13 gas prices, upcoming carbon and emissions restrictions and
14 economic growth.

15 A new report by the State Utility
16 Forecasting Group based at Perdue University projects a
17 22 percent increase in rates for Indiana's residential
18 customers by 2012. The report notes a perfect storm of
19 tightening federal regulations and escalating cost of raw
20 materials and fuel. It's producing a somber price outlook
21 for customers.

22 Douglas Gotham, Director of the State
23 Utility Forecasting Group, said, a lot has to do with a
24 combination of steel prices and fuel prices and certainly
25 the federal mandates to reduce air pollution. Mr. Gotham

1 went on to say, the price projectory on fossil fuels peaks
2 out at the same time we see the biggest hit from pollution
3 controls. We've never seen anything like this before, and
4 we've been doing reports for 20 years. The last time we
5 saw price increases like this was in the 1970s with the
6 energy crisis.

7 These factors are causing rates to go up
8 for Missouri's and the nation's cooperative and electric
9 customers as well. The reasons I've given are well
10 documented in the Association of Missouri Electric
11 Cooperative's monthly Rural Missouri magazines over the
12 last year.

13 Over the next ten years, Missouri's
14 investor-owned cooperative utilities are expected to spend
15 approximately \$8 billion on new generation plants and
16 4 billion to comply with environmental requirements.
17 These Missouri specific numbers were calculated in late
18 2006 and certainly increased since given some of the
19 escalation in material costs.

20 Senate Bill 179 provides a reasonable but
21 by no means easy mechanism to address a portion of the
22 environmental compliance expenditure aspect of this
23 situation. The provisions in these rules are extensive
24 and the -- and complicated. Many of them are designed to
25 protect customers while providing electric utilities a

1 means to see more timely recovery of prudently incurred
2 environmental compliance costs.

3 SB 179 includes the following customer
4 protections. The Commission has discretion to accept,
5 reject or modify utility's year-end proposals. Rate
6 adjustments under an ECRM shall not generate annually more
7 than two and a half percent increase in revenues. An ECRM
8 cannot be in effect for more than four years without a
9 general rate case. Prudence reviews are required no less
10 often than every 18 months. Annual true-up of actual ECRM
11 charges versus authorized revenues, customer line item
12 bill disclosure of ECRM charge.

13 In addition to these protections, the
14 Commission Staff and parties have participated in the
15 rulemaking workshops added the following customer
16 protections: Submittal of long-range environmental
17 compliance plan, extensive application requirements to
18 establish, continue or modify an ECRM, extensive
19 surveillance monitoring reporting to parties, extensive
20 monthly reporting requirements.

21 Rules also include a number of consumer
22 protections that protect -- protect parties' rights to
23 intervene, participate, submit and receive updates to
24 discovery, and file a complaint case if overearnings are
25 suspected. Finally, these rules require the Commission

1 review the effectiveness of these rules in 2011 and may,
2 if necessary, initiate rulemaking proceedings to revise
3 these rules.

4 Now, that concludes the portion of the
5 comments I was planning to read into the record. The rest
6 is provided in the exhibit.

7 QUESTIONS BY COMMISSIONER CLAYTON:

8 Q. Mr. Wood?

9 A. Yes.

10 Q. Welcome back. How long have the workshops
11 been going on regarding the ECRM portion of SB 179?

12 A. I believe they started -- and I don't
13 remember the exact dates. Some of the workshops I was not
14 in attendance at. I was in the fuel adjustment clause
15 ones, much more involved. But the ECRM, I believe it was
16 the first part of this year. I don't remember the dates
17 exactly or the time frame.

18 Q. Well, I guess the reason I ask, when did
19 your involvement begin with MEDA on this rule?

20 A. My involvement with MEDA in this rule would
21 have been with the environmental cost when -- after they'd
22 been published with the Secretary of State.

23 Q. After they published with the Secretary of
24 State?

25 A. Uh-huh.

1 Q. Okay. The reason I'm asking, I'm trying to
2 get a handle on how the proposal has changed throughout
3 the workshop process. Do you know the answer to that?

4 A. You mean from what was in the fuel
5 adjustment clause version or --

6 Q. Well, as I recall -- as I recall, the --
7 the fuel adjustment clause surcharge proceeding began and
8 it went a long time, and there were drafts that were
9 thrown out there, and then it -- it kind of -- issues --
10 some issues I think got worked out, and there were some
11 things that got modified as it went along the way.

12 What I'm trying to get a handle on is, with
13 this rule, how different is the published version versus
14 the version that was started in the workshop process?

15 A. I hate to defer to somebody, but when that
16 task was at the Public Service Commission, it was Lena was
17 the person more in charge of those workshops and the
18 changes to the text at the time.

19 Q. Okay. Before I ask some questions of the
20 prior witnesses about consumer benefits, and I was
21 wondering if you can identify what the consumer benefits
22 are in this rule, not the protections, but -- or are
23 there, are there any benefits that the consumer actually
24 gets?

25 A. What are some of the -- if I understand,

1 your question is, what are some of the benefits to
2 customers with an ECRM rule in place?

3 Q. Yes. Yes, if any.

4 A. Okay. Well, you've talked earlier about
5 the ROE evaluation. If there's some change in risk that's
6 appropriate, then you can deal with that in that
7 provision. There was --

8 Q. Do you believe that there is always a -- a
9 reduction in risk and a necessary reduction in ROE if an
10 ECRM is in place?

11 A. I'm not an expert on calculation of return
12 on equity, although there was the provision in the statute
13 to consider changes that the Commission may consider
14 appropriate.

15 Q. Okay.

16 A. There were a number of others I would note.
17 One is while the -- this does provide for increases, the
18 statute and the rules are also explicit, the decreases may
19 be reflected as well.

20 Q. In the ECRM?

21 A. Yes.

22 Q. When would you have a decrease in an ECRM?

23 A. Let's say that you had an expense for some
24 sort of a chemical added or something in compliance with
25 an environmental provision, and when you came in for your

1 next change in the ECRM, you had replaced that with some
2 other additive or fuel that costs less than you would be
3 able to provide, that brings that in as a decrease.

4 Q. So in that instance, you're saying that --
5 you're saying that in the alternative, without an ECRM,
6 that base rates included an expense that subsequently goes
7 down, there would be a reflection of that cost reduction
8 in rates through an ECRM?

9 A. The ECRM could provide for a reduction in
10 rates versus what they would be otherwise, much like a
11 fuel adjustment clause, it's not only increases in cost of
12 fuel, it also can bring through decreases in cost of fuel.

13 Q. Can the ECRM be negative?

14 A. Depends on how much is established in base
15 in the ECRM surcharge.

16 Q. Well, let's say -- let's take your example
17 where you basically -- I think to start, you're going to
18 have a certain amount of expense is going to be included
19 in rates, and your ECRM is probably going to start at
20 zero, and then it's going to -- it will increase or you're
21 going to have subsequent proceedings that will implement
22 the surcharge, and those are investments that are made
23 following the rate case. Now, that's how ISRS works. I'm
24 assuming that's how ECRM will work.

25 A. I believe it depends on how much you end up

1 putting in base. If you put everything in base and then
2 there wasn't an increase in capital, you know, some sort
3 of a CAPX with a return, and the only thing that came in
4 was a reduction in expense, depending on how it's
5 allocated, yes, I suppose theoretically it could be a
6 negative.

7 Q. So all things being equal, if that chemical
8 that was being used is put in the base rates and the price
9 of that chemical goes down, this rule contemplates having
10 a negative surcharge? You've got my attention now.

11 A. Well, it depends on -- I'm thinking we're
12 out on the hypothetical ledge, because I think it's likely
13 if there was an expectation something would change, it
14 would more likely be in the surcharge as a positive value
15 and then could be reduced.

16 Q. Is that how this is conceived, the
17 surcharge is going to start off more than zero? It will
18 actually start off as a rider?

19 A. My expectation is during the rate -- the
20 rate case it will start off as something in base with
21 zero, but that's -- I don't know that the --

22 Q. Okay.

23 A. I don't know that the rule requires it be
24 that way. I suppose you'll see different proposals when
25 rate cases come in.

1 Q. So you start off at zero, and then say in
2 six months the expenses for eligible investments go up, so
3 then you're going to potentially have a positive
4 surcharge, correct?

5 A. Yes.

6 Q. Now, that surcharge happens under a
7 circumstance with ECRM that would not happen under current
8 law? Basically, if that expense went up under rates right
9 now, there would be no surcharge that would go into place?

10 A. Correct. You would not be recovering those
11 expenses.

12 Q. Okay. So the surcharge let's say goes --
13 let's say it goes up to \$5. Okay? And then the next
14 period, the six months period or the 12, whatever the time
15 period is, those expenses go down by a dollar. So then
16 you're saying that -- that that rider would go down \$4 if
17 there's a dollar offset?

18 A. Yes, I believe it could. Okay. I had a
19 few others.

20 Q. Go ahead.

21 A. Fewer rate cases and the administrative
22 costs to the State and the different parties with rate
23 cases. Also, I think you're looking at smoother rate
24 increases as opposed to bringing blocks of expense and
25 capital changes in that rate case. You know, say it was

1 multi-year period between rate cases. The ECRM could
2 provide for bringing those in in smaller bites.

3 Q. What do you mean, smoother? Did you say
4 smoother?

5 A. Yes.

6 Q. What do you mean?

7 A. Smoother increases in rates. You know,
8 let's say that under two scenarios, option A you have --
9 you have a rate case that there's four years between rate
10 case A and B, and in the second option let's say you have
11 an ECRM and you're still going to have four years between
12 rate case A and B. If you -- under the first scenario,
13 you would build your projects, you would incur your
14 expenses and all that, and it would come in as a chunk.
15 You know, let's say it was a 5 percent increase. Well,
16 all of that would come on in the fourth year.

17 If you had an ECRM with the ability to come
18 in twice per year and you were bringing in those discreet
19 increases and expenses and capital expenditures to comply
20 with environmental regulations, you might bring that in in
21 several pieces that add up to 5 percent over a period of
22 years.

23 Q. And that's a benefit to consumers?

24 A. Well, we've had some concerns about rapid
25 increases in rates, and this is -- this is one mechanism

1 that at least brings those in in smaller pieces.

2 Also, you know, we believe that this
3 removes some disincentives to invest in infrastructure
4 sooner and clean the air sooner. Also, it's a --
5 provides more financial stability to utilities, may help
6 with access to lower cost of capital.

7 Q. So you're suggesting that this is going to
8 accelerate investment?

9 A. No. It removes some of the disincentives
10 that may exist to put investment in at a particular time.

11 Q. Okay. It removes the disincentive. So can
12 I say that means it incents investment? You're speaking
13 in kind of a double negative.

14 A. Well, I hesitate to say it incent -- it
15 puts an incentive in to invest in this at a given time
16 frame because really what we're pursuing is the type of
17 rate case treatment that would exist here in a general
18 rate case. It doesn't provide some sort of an additional
19 revenue lug or some sort of an enhancement to revenues
20 beyond what the general rate case process would provide.

21 But without the ECRM mechanism, you're
22 looking at, you know, a disincentive to spend money well
23 in advance of when you might be doing a general rate case
24 otherwise.

25 Q. I understand there's this disincentive

1 thing, but does it -- what is the practical result? Does
2 it mean it's going to accelerate the project or not?

3 A. It opens up the opportunity of accelerating
4 a project versus what you might do otherwise, but there's
5 a lot of other factors that go into that that might drive
6 it differently. You know, what's the availability of
7 labor? What's the availability of the products? If
8 you've got a particular engineering group that's very good
9 at doing selective catalytic reduction equipment and their
10 time frame for doing work is X or Y, you might be more
11 inclined to take an earlier period on that.

12 Q. And you're saying that that -- if all those
13 things were in place, that the utility wouldn't take steps
14 to implement that investment earlier, that it would only
15 do it with this ECRM?

16 A. No. I don't want to leave you with that
17 impression. I think it -- there are a lot of different
18 dominoes that fall into effect to make you hit a
19 particular time line on a project. This is one less --
20 this is one you remove, and you're making less of a
21 disincentive to not do it.

22 Q. Is it a fair statement, would you agree
23 with me that ECRM or ECR eligible investments are things
24 that are going to happen at some point or another, they
25 are mandates by law? Would you agree with that statement?

1 A. Yes.

2 Q. So they're going to happen regardless of
3 whether this rulemaking -- or whether this surcharge goes
4 into effect; is that correct?

5 A. In order to be in compliance with state or
6 federal law, yes.

7 Q. Okay. So -- and it's not clear whether or
8 not it would accelerate the projects or not?

9 A. Not clear, no.

10 Q. Okay. Are you knowledgeable of whether the
11 ISRS surcharge that has been in place now for two or three
12 years, has it accelerated any projects that are ISRS,
13 I-S-R-S, eligible projects? Has it accelerated investment
14 in that circumstance?

15 A. Well, I -- I understand the comparison
16 you're making. I wouldn't necessarily view it the same
17 way. The ISRS things that are coming are non-revenue-
18 producing, and they fall into two categories, safety
19 related replacement requirements, which were quite often
20 spelled out in requirements with PSC Staff gas safety
21 section in terms of timeline and the amount per year, and
22 relocation projects required by state or local highway
23 projects.

24 So they don't get the option to look at a
25 time frame of several years typically to do this. It's

1 something that's at a given time. So I wouldn't say I've
2 seen anything that the ISRS accelerates, and I'm not sure
3 it has the opportunity to do so.

4 Q. Well, actually, hasn't the ISRS decelerated
5 investment in those projects? Wouldn't you agree with me
6 that at least one or two utilities, potentially three gas
7 utilities, have reduced their obligations under their main
8 safety replacement programs following implementation of
9 ISRS? And if you don't know, you don't know.

10 A. No, don't know that.

11 Q. That's an easy way out.

12 A. And I don't.

13 Q. You don't believe that an ISRS, having an
14 ISRS, do you believe it removes a disincentive to complete
15 ISRS eligible projects? Do you believe that analogy works
16 in comparing the two surcharges?

17 A. Yes. It does remove the disincentives for
18 that. It's not like they had much of an option. It
19 reduces getting hit with a stick for having done the
20 projects they were required to do.

21 Q. I guess my concern is that we removed a
22 disincentive to actually complete the projects and then
23 they've reversed course, and we throw in a third negative
24 that they've actually reduced the amount of -- amount of
25 feet, the main replacement under those programs, which

1 seems counterintuitive.

2 A. I don't know to what cases you're
3 referring.

4 Q. Okay. We heard earlier, Staff testified
5 relating to the earnings of utilities, that Staff would
6 file an overearnings complaint if they felt that a utility
7 was overearning. Were you in the room --

8 A. Yes.

9 Q. -- during that discussion? And I tried to
10 get Staff -- and I struggled getting, I think, a specific
11 answer, and I understand that, but I struggled getting an
12 answer that would suggest an idea of what -- what would
13 trigger an overearnings complaint. What is an appropriate
14 amount over one's authorized rate of return? What does
15 MEDA see as an acceptable trigger of a complaint being
16 filed for overearning? 100 basis points over? 150 basis
17 points over?

18 A. I don't have an answer to that question.

19 Q. Why don't you have an answer?

20 A. I'm not an expert on what sort of
21 authorized rates of return and where something becomes
22 burdensome or inappropriate or unreasonable. I don't have
23 an answer to that question because I'm not an expert in
24 that area.

25 Q. Is that something -- I'll leave it at that.

1 Thank you, Mr. Wood.

2 JUDGE DALE: Thank you, Mr. Wood. You may
3 step down.

4 MR. WOOD: Thank you.

5 JUDGE DALE: Ready for Mr. Byrne.

6 MR. BYRNE: Yes. Your honor, I'd like to
7 call Mr. Mark -- I mean Mr. Mark Birk to the witness
8 stand. Mr. Birk had -- well, he has, I guess, two sets of
9 comments. We filed some remarks on EFIS that are longer
10 that more extensively address issues raised by the
11 parties. He's prepared to make a short -- short
12 additional comments here, or if you want, he can also read
13 those comments that were filed on EFIS into the record.
14 So however you want to proceed. We can either mark it as
15 an exhibit or he can read those into the record, too.

16 JUDGE DALE: Let's go with the plan of him
17 making some sort of overview of what's contained in there,
18 marking -- that will be Exhibit 3, and making sure that
19 everyone has a copy of it.

20 MR. BYRNE: Great.

21 JUDGE DALE: We'll go with that.

22 THE WITNESS: Thank you.

23 (Witness sworn.)

24 (EXHIBIT NO. 3 WAS MARKED FOR
25 IDENTIFICATION BY THE REPORTER.)

1 JUDGE DALE: Should he just go ahead.

2 MR. BYRNE: Yes.

3 JUDGE DALE: One thing I would like for you
4 to do is at some point say that -- say whether or not this
5 really is your testimony, et cetera. This Exhibit 3.
6 MARK BIRK testified as follows:

7 MR. BURKE: It is. It is. So just kind of
8 begin at -- it is. It is my testimony.

9 JUDGE DALE: That's sufficient.

10 MR. BURKE: Thank you. Good afternoon.
11 I'm Mark Birk, vice president of power operations for
12 AmerenUE. In my role as vice president of power
13 operations, I am responsible for all of AmerenUE's
14 generating plants except the Callaway nuclear plant.

15 Today I am here to talk about the rules the
16 Commission has proposed for the environmental cost
17 recovery mechanisms under Senate Bill 179 and how these
18 rules would impact AmerenUE. AmerenUE takes very
19 seriously our responsibility to be good stewards of the
20 environment as we work to provide our customers with
21 reliable energy they need at a price they can afford. Our
22 commitment to the environment is embodied in our
23 stewardship principles, and I'd like to give you a few
24 examples of what we have done thus far.

25 Since 1990, AmerenUE has reduced its SO2

1 emissions rate by 78 percent and it's NOX emissions rate
2 by 83 percent. Our plants are recognized as some of the
3 lowest NOX producers in the country.

4 Since the late 1970s, AmerenUE has improved
5 particulate collection to the point that the company is
6 collecting more than 99 percent of all particulate
7 emissions from the stacks of our plants. We have also
8 been leaders in seeking innovative solutions to
9 environmental problems. As an example, we're currently
10 testing mercury control technology at a couple of our
11 plants. We've also developed innovative solutions for NOX
12 control at our Sioux power plant.

13 In terms of global climate change, Ameren
14 continues to take actions in support of voluntary
15 reductions and offsets to address that climate change.
16 Ameren is working with federal legislators on a framework
17 for new climate change legislation that will provide
18 protection to our customers and make meaningful steps to
19 address growing greenhouse gas emissions. We would accept
20 a mandatory CO2 program if it properly balances
21 environmental benefits and costs to the economy. In
22 addition, we are exploring renewable energy options,
23 opportunities to use and create markets for combustion
24 byproducts and for converting waste to energy.

25 Finally, we recently issued a report

1 entitled Stewardship, Balancing The Needs of Our
2 Environment, Our Customers and Our Economy. This report
3 outlines our environmental performance to date, noting
4 that we have been leaders in achieving SO2 and NOX
5 reductions ahead of federal mandates. The report also
6 discusses the portfolio of actions we are taking to
7 address our greatest environmental challenge, the
8 reduction of greenhouse gas emissions.

9 Our efforts include major consumer
10 efficiency measures, continued investment in new
11 technologies, greater use of renewable energy sources, and
12 measures to offset carbon emissions. You can find a
13 summary or full report on our website at
14 Ameren.com/environmentalreport.

15 We believe that SB 179 is good public
16 policy because it allows us to continue our leadership in
17 environmental stewardship while providing a reliable and
18 stable framework for the cost recovery of the billions of
19 dollars that we will have to spend to meet current and
20 future state and federal requirements. We also feel that
21 the statute contains the necessary consumer protections to
22 ensure that the environmental costs incurred are prudent.

23 We are generally supportive of the proposed
24 rules submitted by the Staff and published by the
25 Commission in this proceeding as we feel these rules

1 reflect the relevant policy decisions made by the
2 Commission in the recent fuel adjustment clause rulemaking
3 proceeding.

4 The one aspect of the rules that we
5 disagree with is the requirement that electric utilities
6 must separate their entire existing rate base into
7 environmental and non-environmental categories and include
8 and all changes to excising environmental rate base in the
9 ECRM.

10 This type of categorization would be
11 extremely complicated and lead to an unworkable process
12 where parties would end up debating the environmental
13 qualities of every pipe, drain, smokestack, fan, sink,
14 potentially even urinals, control panels at every plant
15 that we have. This type of categorization would
16 effectively make ECRM unusable and should be rejected.

17 AmerenUE prefers a mechanism for ECRM
18 similar to the mechanism the Commission has adopted for
19 natural gas and water in the infrastructure system
20 replacement surcharge regulations. I think we've talked
21 about those quite a bit today. We believe this approach
22 is fair to both utilities and consumers and provides the
23 necessary consistency in the treatment of rate base under
24 the surcharge. AmerenUE filed written comments in this
25 proceeding, recommended specific language changes to the

1 proposed rules, and I am providing more detailed written
2 comments today, and that was put into the record, I
3 believe, as Exhibit 3, which I hope the Commission will
4 take into consideration in developing its final rules.

5 As I mentioned earlier, AmerenUE has been a
6 leader from an environmental standpoint for a number of
7 years. We applaud the Legislature and the Commission for
8 their efforts, foresight and leadership in the development
9 of the ECRM. We are asking you today to continue that
10 leadership by adopting an ECRM that is workable and will
11 allow AmerenUE to meet our obligations to provide reliable
12 and efficient energy to our customers while continuing
13 this tradition of environmental excellence.

14 Thank you for giving me the opportunity to
15 address the Commission today on this important issue.
16 If you have any questions, I'd be happy to answer them
17 now.

18 JUDGE DALE: Commissioner Clayton?

19 COMMISSIONER CLAYTON: Go ahead.

20 JUDGE DALE: Commissioner Appling?

21 COMMISSIONER APPLING: No questions.

22 QUESTIONS BY COMMISSIONER CLAYTON:

23 Q. Sir, what is your position again?

24 A. I am vice president of power operations for
25 AmerenUE.

1 Q. What does that mean?

2 A. Basically, I am responsible for the
3 operations and engineering of the plants, all of the
4 AmerenUE power plants except the Callaway nuclear plant.
5 So we not only operate the plants, but design and install
6 the projects associated with those plants.

7 Q. Do you participate in rate cases when
8 Ameren files them or AmerenUE files rate cases?

9 A. I participated in the last rate case, yes.

10 Q. You did?

11 A. Uh-huh.

12 Q. Okay. In the last rate case, can you tell
13 me the amount of money that was added into rates
14 associated with ECRM eligible investments?

15 A. I can't. I cannot give you that off the
16 top of my head.

17 Q. You have an approximation?

18 A. The -- the rules that have gone into --
19 that are going into effect, basically CAIR and CAMR, you
20 know, CAIR, the interstate air rule, CAMR, the mercury
21 rule, predominantly kick in in 2010 and 2015. So the
22 significant environmental expenditures associated with
23 those rules, a lot of those are ongoing now, and they have
24 not become operational yet.

25 Q. So --

1 A. It would --

2 Q. Very little?

3 A. It would have been a small amount.

4 Q. Very small number?

5 A. Uh-huh.

6 Q. How about in this rate case that you-all
7 are looking at filing here in the next year?

8 A. In the next year, we will not have -- the
9 big expenditure that we're currently looking at right now
10 is the scrubbers at the Sioux plant, which I believe I had
11 alluded to in some discussions at the rate case hearings.
12 Those will not be in service until sometime late '09 or
13 early 2010, so they would not be included in the rate case
14 we'd be contemplating for this year.

15 Q. So is your answer you don't know? I think
16 this news article here says that -- oh, excuse me. That's
17 not true. I don't think it has an amount

18 A. Yeah.

19 Q. Have you-all decided how much that rate
20 increase is going to be, your request?

21 A. I am not aware of that at this point, no.

22 Q. And you're not aware of how much of that
23 would be environmental compliance that would fall into it?

24 A. No, I don't, not at this point.

25 Q. Do you have an opinion of how much --

1 you're an operations guy, you're an engineer, right?

2 A. Yes.

3 Q. Not a ratemaking guy?

4 A. No, I'm not.

5 Q. I'll spare you the next questions.

6 A. Thank you. I appreciate that.

7 JUDGE DALE: Thank you, Mr. Birk. You may
8 step down.

9 MR. BIRK: Thank you.

10 MR. CONRAD: Your honor, could I make an
11 inquiry of the Bench, please?

12 JUDGE DALE: Certainly.

13 MR. CONRAD: The gentleman who just left
14 the stand, this is the first that we had seen of his
15 Exhibit 3, which responds or appears to respond to
16 comments that Noranda had filed, actually the 3rd, that
17 you previously allowed in. I appreciate and don't want to
18 prolong the process here, and I appreciate your desire to
19 at some point in time bring it to conclusion, but I am
20 somewhat surprised to see the combination of locking the
21 record down today and simultaneously putting this type of
22 material in that we have not seen.

23 I don't, for example, have at my fingertips
24 the language that is referenced by the gentleman, but I am
25 aware of two concrete examples, ER-2006-0004, in which

1 Aquila was required to absorb 5 percent, and 5 percent
2 isn't what we had asked for, but 5 percent is greater than
3 zero, and a heat case also for Aquila in which they
4 absorbed 20 percent. That was done by agreement, so --
5 and approved by the Commission.

6 So I think I would like to see if there is
7 some limited possibility for some short time that we might
8 and perhaps other parties might be able to file very
9 targeted responses to that.

10 I understand not trying to open up the ball
11 of wax again, but just to say, you know, wait a minute
12 here, here we come on the last day and this is stuff that
13 we had not seen until a few moments ago. Is there some
14 thought about that? Has there been any thought given to
15 that?

16 MR. BYRNE: I guess, just like every
17 rulemaking proceeding, there's new comments, new testimony
18 provided. Certainly Mr. Burke could have read that into
19 the record. I guess -- I understand where Mr. Conrad's
20 coming from, but if it applies, it ought to apply to
21 everybody then. We ought to be able to respond to
22 whatever new stuff was said or put in the record today, I
23 guess, if that's going to be the --

24 JUDGE DALE: I believe you, Mr. Wood. I am
25 concerned with this deviation from the process that was

1 heretofore used, which is that the day of the hearing was
2 the end of the comment period.

3 I received feedback from parties that there
4 was a desire to be able to at least read all of the
5 comments before coming in to the hearing and testifying.
6 I do not want to get into rounds of one party said this
7 and then there's response, then there's a response. If --
8 if that's the case, then we'll go back to the old process,
9 just because it allowed some definitive hard bright line
10 for comments.

11 Having said that, since today is the day of
12 the hearing, any subsequent additional testimony you may
13 want to file should be filed by midnight tonight.

14 MS. VUYLSTEKE: Your honor, would it be
15 possible for the Commission to permit comments after the
16 hearing on a set deadline, after -- I mean --

17 JUDGE DALE: Whatever is published in the
18 Missouri Register is what's the deadline for rulemakings.

19 COMMISSIONER CLAYTON: Yeah. I'm not sure
20 of the law on this, but I mean, I think Chapter 536
21 applies here, and there are limitations. I'm not sure if
22 you go beyond whatever that deadline is, and I don't know
23 when that is.

24 JUDGE DALE: The deadline for testimony is
25 today, so --

1 COMMISSIONER CLAYTON: Mr. Conrad, is there
2 authority to extend that, do you know? I don't think
3 we -- I mean, the Commission is a tribunal. I don't know
4 if we have the authority.

5 MR. COFFMAN: I have a suggestion. Since
6 the hearing that was posted in the rule, which I
7 understand is what you guide comments on, gives a start
8 date for this hearing but doesn't give an ending time, I
9 don't know what would prevent the Commission from
10 continuing this hearing to some future date and then just
11 for the purpose of accepting comments, I suppose they
12 could be filed and then accepted in, you know, as a
13 procedural manner, say a week from now.

14 JUDGE DALE: I'm not up for a week from
15 now, but I am willing to give you 'til tomorrow.

16 MR. CONRAD: I could go for a lesser period
17 of time. I don't want -- if Mr. Coffman needs more time,
18 I don't certainly want to cut that. We can possibly have
19 something by today, because the comments here that are
20 directed to Noranda were short, but others are more
21 lengthy.

22 The judge's point, I don't know, I need to
23 look at 536. It's been a while since I have looked at
24 that, Commissioner Clayton, to your question. I certainly
25 agree with you that, you know, the Commission can't

1 override 536.

2 COMMISSIONER CLAYTON: As much as we might
3 try.

4 MR. CONRAD: As much as you might like to.

5 JUDGE DALE: Well, I actually think that
6 Mr. Coffman's suggestion is reasonable, and will extend
7 the deadline to midnight tomorrow night.

8 MS. VUYLSTEKE: Your honor, is it -- do you
9 think it would be possible to have the transcript quickly
10 enough that we can respond? It seems like it would assist
11 the Commission.

12 JUDGE DALE: No. I can tell you that. No.
13 I'm not interested in getting rounds of -- it's not that
14 kind of a hearing, as the Western District has very so
15 clearly stated. Let's move along.

16 MR. BOUDREAU: I don't -- I'm not
17 belaboring the same point. I want to raise a new one.
18 We've had some of the prepared testimony made as exhibits.
19 Is it necessary for me to offer that or is it -- are these
20 automatically in the record?

21 JUDGE DALE: They're in the record.

22 MR. BOUDREAU: Thank you.

23 JUDGE DALE: It's a rules hearing.

24 MR. MILLS: Judge, Public Counsel is going
25 to put Mr. Trippensee on the stand as a witness. We also

1 have Mr. Kind available. Unless there's specific
2 questions for him, I don't -- we're going to use the same
3 procedure that the Staff did with Ms. Mantle and
4 Mr. Meyer. He's available to answer questions if
5 necessary, but we don't plan to put him on the stand. If
6 you care to swear them both in, they can both testify.

7 JUDGE DALE: Let's just do that.

8 (Witnesses sworn.)

9 JUDGE DALE: Thank you.

10 MR. MILLS: And I have written copies of
11 the remarks that Mr. Trippensee is planning to make on the
12 record, and I'd like to make that an exhibit as well.

13 JUDGE DALE: That will be Exhibit 4, I
14 believe.

15 (EXHIBIT NO. 4 WAS MARKED FOR
16 IDENTIFICATION BY THE REPORTER.)

17 MR. TRIPPENSEE: May it please the
18 Commission? I'm Russell Trippensee. I'm the chief
19 utility accountant for the Missouri Office of Public
20 Counsel.

21 On January 2nd of this year, the office
22 filed comments on the Commission's proposed rules
23 regarding the ECRM as published in the Missouri Register
24 on December 3rd of 2007. The Commission's proposed rules
25 address environmental costs incurred by electric utilities

1 providing retail service in Missouri. These rules are the
2 result of the passage of Senate Bill 179 during the 2006
3 legislative session.

4 My testimony today is intended to respond
5 to comments filed by various parties in this docket on or
6 after January 2nd. These comments are not intended to
7 change or supplement the comments OPC filed with one
8 exception. However, I would be happy to answer any
9 questions the Commissioners might have regarding those
10 comments.

11 First, I'd like to thank the Commission for
12 the workshop process that allowed all stakeholders the
13 opportunity to provide input into the process of
14 development and drafting of these rules. While all
15 stakeholders could not reach agreement on how the rules
16 should reflect the intent of SB 179, that process was
17 beneficial to all who participated.

18 Public Counsel's comments indicate its
19 belief that the draft rules could be improved in order to
20 meet the goal of regulation, which is to provide safe and
21 adequate service at just and reasonable rates to the
22 customers. Public Counsel believes the comments of the
23 non-utility parties to this case provide other reasonable
24 recommendations for moving closer to that goal.

25 Specifically, Public Counsel would echo

1 AARP's comment regarding the two and a half percent cap
2 and that the appropriateness of any inclusion of any
3 deferrals in rates be addressed in a subsequent rate case.
4 Public Counsel would also state this hard annual cap --
5 that this is a hard annual cap, excuse me, and further
6 believes the rule should reflect that this annual cap
7 should not be allowed to accumulate if not used in any
8 year during the four-year duration of an ECRM.

9 Stated another way, if there are no changes
10 to the ECRM, eligible costs during the first two years of
11 an ECRM, then the allowable revenue increase in year three
12 is still the two and a half percent and not the cumulative
13 seven and one half percent.

14 The exception I referenced with regard to
15 Public Counsel's filed comments is that Public Counsel
16 would recommend that paragraph 4 CSR 240-3.162(2)(O), I
17 mean (O), excuse me, be deleted in its entirety if the
18 Commission accepts Public Counsel's recommended paragraph
19 4 CSR 240-3.162(2)(P) as contained in Public Counsel's
20 comments of January 2nd.

21 The paragraph the Public Counsel would
22 delete contains information that would be in Public
23 Counsel's recommended addition, albeit the recommended
24 addition is in more detail, and it's consistent with the
25 surveillance rules contained in the rule.

1 best summarized by the following concepts: The language
2 of SB 179 is difficult to implement, so ignore it. The
3 purpose of SB 179 as it relates to environmental costs was
4 to address more than environmental cost. The ECRM should
5 be implemented in a manner consistent with the
6 infrastructure system replacement surcharge, commonly
7 referred to as ISRS, and that excess earnings at the
8 expense of ratepayers is authorized by SB 179.

9 The Commission's proposed rule sets out a
10 process, develops an environmental cost of service as
11 determined in a rate case. Subsequently, if these costs
12 change the utility would have the opportunity to request
13 an ECRM adjustment consistent with the language from SB
14 179 that states a periodic rate adjustment. The ECRM will
15 reflect, and this is quotes, increases or decreases in its
16 prudently incurred costs, whether capital or expense, to
17 comply with any federal, state or local environmental law,
18 regulation or rule, close quotes.

19 In order to measure change, this Commission
20 must have a base from which to measure. This measurement
21 of change is a basic mathematical concept that is embodied
22 in the language of SB 179 requiring that the rate change,
23 quote, reflects increases and decreases, close quote.

24 The comments of MEDA and AmerenUE would
25 have this Commission ignore this basic mathematical fact

1 by eliminating from the Commission's proposed rules the
2 requirement to determine the base capital cost related to
3 environmental in the general rate case. MEDA's comments
4 proposed a new cost definition entitled base environmental
5 expense to substitute -- to substitute throughout the
6 proposed rule as the base from which -- which is
7 subtracted from the new environmental cost including both
8 capital cost and expense in order to determine the
9 revenues to collect from ratepayers through the ECRM.

10 MEDA's new cost definition completely
11 excludes capital costs from the determination of its base
12 environmental expense. The result is that MEDA would have
13 this Commission compare capital costs and expense to the
14 proposed base environmental expense that excludes capital
15 costs. MEDA justifies this exclusion by stating that
16 determining environmental and non-environmental rate base
17 would be, quote, an extremely unwieldy and unreasonable
18 exercise, close quote.

19 While I will address the fallacy of this
20 claim, which AmerenUE comments expand upon, suffice it to
21 say that Public Counsel does not believe this Commission
22 should ignore the requirements of SB 179 just because
23 parties allege they would be difficult to comply with.

24 MEDA uses the terms environmental rate base
25 and non-environmental rate base -- excuse me --

1 environmental rate base and non-environmental rate case
2 within quotes, to distinguish rate base items that are
3 used to comply with environmental rules and rate base
4 components that are not affected by environmental rules.

5 MEDA's comments list all types of equipment
6 that allegedly would need to be identified as pertaining
7 to environmental compliance and even asserts the
8 Commission would need to get down to the level that looks
9 at items that cost less than 100 dollars, or as the Ameren
10 just testified, the urinals. AmerenUE's comments
11 exaggerate MEDA's already exaggerated concerns with a
12 discussion of the allocation of items that serve dual
13 purposes. One must even assume that since AmerenUE states
14 that every single item in a utility's rate base would have
15 to be reviewed and categorized, that AmerenUE would
16 propose to allocate the proverbial president's desk along
17 with the aforementioned porcelain.

18 Public Counsel would submit that the
19 Commission's proposed definition of environmental costs
20 that refers to, quote, directly related to compliance,
21 close quote, clearly indicates that the cost to be
22 considered in the calculation of costs to be included in
23 base rates are much more narrowly defined than the utility
24 stakeholders have asserted.

25 Public Counsel concurs with the

1 environmental revenue requirement approach in the
2 Commission's proposed rule and believes that investments
3 or costs requiring allocations should not be required to
4 be included in the calculation of these environmental
5 costs. Public Counsel recommends that if the investment
6 is recorded as a unit of property in a manner consistent
7 with the Commission rules on continuing property records
8 and its predominant purpose is directly related to the --
9 with an environmental rule or law -- or law, then that
10 property should be included in the ECRM calculation.

11 As an example, power plant may require
12 pollution control device housed in a structure. In turn,
13 that structure might also house ancillary functions not
14 directly related to the pollution control device, such as
15 a storage room, storage facilities. The predominant
16 purpose of the structure is to house the pollution control
17 device, and therefore it would be included in the ECRM
18 calculation and not require an allocation of the section
19 that was storage versus the section that was actually
20 housing the pollution control device.

21 A second point that must be made pertains
22 to the review of plant investments, which would be made in
23 the initial case in which a utility files for an ECRM.
24 Once this task is completed and the Commission approves
25 the findings, that work would not need to be performed

1 again as the baseline would have already been set. Only
2 new investments will need to be reviewed.

3 It is also critical to point out that the
4 purpose of the ECRM is to address major new environmental
5 investments as are outlined in MEDA's initial comments
6 filed on January 2nd. Per those comments, in the next
7 decade over \$4 billion is expected to be invested in
8 Missouri utilities, which include the coops. This
9 Commission is well aware of KCPL's regulatory plan that
10 included over \$100 million in environmental upgrades.

11 These levels of investments are easily
12 identifiable, as are the property units that they replace
13 as the pre-existing system was installed. The
14 Commission's proposed rules recognize that it has
15 discretion to determine which portion of prudently
16 incurred environmental costs should be recovered in an
17 ECRM and what portion should be recovered in base rates.

18 The Commission should recognize that
19 materiality of the investment and the resulting effect on
20 earnings are important factors to consider. Misleading
21 comments that raised red herring issues, like identifying
22 and tracking valves costing less than \$100 should be
23 ignored.

24 The utility stakeholders' attempt to get
25 this Commission to ignore environmental capital costs

1 included in base rates when calculating the ECRM is
2 nothing more than a variant of the age old practice of
3 double dipping in which a utility tries to get the
4 Commission to include both a historic cost that has been
5 replaced by another cost along with the new cost.
6 Exclusion of capital costs in base rates from the ECRM
7 calculation would result in double dipping as even assets
8 that have been retired would still be in the total rates,
9 that is base rates in the ECRM, that are being paid by the
10 ratepayer. That is clearly bad public policy.

11 Public Counsel finds it very enlightening
12 that AmerenUE argues that other parties, and specifically
13 mentions OPC, would argue that the ECRM should address
14 regulatory lag for customers. This is a straw-man
15 argument as OPC is not making any such arguments. Public
16 Counsel does believe that regulatory lag can provide
17 incentives for a utility to operate in an efficient manner
18 and that single-issue rate mechanisms create distortions
19 in those incentives.

20 It is more telling to read the rest of the
21 sentence where that phrase is contained where Ameren makes
22 a previously mentioned assertion. AmerenUE goes on to
23 indicate that, quote, the proposed environmental rate base
24 fails to recognize that, even with a ECRM, the utility
25 will still experience significant regulatory lag for huge

1 costs, close quote.

2 AmerenUE concludes the paragraph in which
3 that sentence is contained by talking about all the other
4 expenses and operating costs that the electric utilities
5 are allegedly experiencing. By ignoring the clear
6 language of SB 179, it requires the measurement of the
7 change in environmental costs. The utility stakeholders
8 are attempting to use the ECRM to address regulatory lag
9 associated with other costs by having the ECRM calculation
10 that will always result in an overstatement of the change
11 in environmental costs.

12 MEDA and AmerenUE recommend that this
13 Commission look to the infrastructure replacement
14 surcharge, which I'll refer to as the ISRS, when
15 developing the rules for the ECRM. The utility
16 stakeholders assert the ECRM should treat capital costs
17 like they are treated in the ISRS.

18 What the utility stakeholders ignore is the
19 statute enacting the ISRS is completely different than the
20 statute enacting the ECRM. The utility stakeholders also
21 ignore that neither the ISRS or the fuel adjustment
22 statutes under SB 179 are the Commission approved rules
23 for those two statutes, provide for a cap in revenue
24 changes and a deferral of the revenues that the utility
25 would receive absent the revenue change exceeding the cap.

1 The deferrals under an ECRM are separate
2 and distinct from the change in the environmental revenue
3 requirement and create the opportunity for the utility to
4 overearn. This is a very real possibility. This very
5 real possibility is why Public Counsel proposes the
6 Commission look at earnings during the period of any
7 deferral prior to allowing that -- the recovery of those
8 deferred amounts in the subsequent rate case. This review
9 of earnings would not occur in relation to any
10 calculations of the net change in eligible environmental
11 costs and the environmental revenue requirement changes
12 that are subject to the two and a half percent cap.

13 The ISRS statute is very prescriptive and
14 it is mandatory, arguably mandatory that the Commission
15 authorize an ISRS in a manner prescribed in the statute if
16 the utility makes qualifying investments as defined in the
17 statute. This is just what happened in Case No.
18 WO-2004-0116 when this Commission approved an ISRS that it
19 increased rates by over three and a half million dollars
20 on January 1st, 2004 for Missouri American Water. Then
21 less than four months later, the company stipulated with
22 all the other parties to a general rate decrease effective
23 April 9th -- 19th, 2004.

24 The effect of these cases was that the
25 ratepayers paid ISRS charges when the utility was

1 experiencing excess earnings. Although such an outcome is
2 allowed and arguably required under the ISRS statute, it
3 is not required by SB 179 and should not be allowed by the
4 Commission rules implementing SB 179. The prescriptive
5 nature of the ISRS statute mandated that a rate increase
6 occur despite the fact the utility was overearning.

7 The ISRS statute specifically defines
8 investments to be used in calculating the ISRS. The
9 prescriptive nature resulted in ratepayers paying
10 excessive earnings for -- excessive earnings for the very
11 first time the ISRS was used. In contrast, the ECRMs
12 statute does not provide for mandated rate changes and
13 instructs this Commission to develop rules to implement an
14 ECRM if it find -- if it finds it is appropriate.

15 While Public Counsel or anyone else cannot
16 be absolutely sure, it would appear that the Legislature
17 learned from their ISRS experience. The ECRM statute
18 would seem to reflect that since this -- the Legislature
19 approved an ECRM statute that gave the Commission a tool
20 it could evaluate and decide how and when to use.

21 The utility stakeholders' assertion that
22 the ECRM, the ISRS is not supported by statutory language,
23 actual ratemaking experience, nor is it good public policy
24 to write a rule for the ECRM that is based on conforming
25 to another completely unrelated statute.

1 AmerenUE also contends that allowing only
2 two ECRM changes per year is detrimental to the utility.
3 Public Counsel agrees, I believe, with Staff witness
4 Meyer's testimony earlier that the material costs that
5 will flow through an ECRM are the large investments that,
6 by the way, are summarized on page 2 of MEDA's January 2nd
7 comments.

8 As this Commission is aware, these type of
9 major products have -- projects have specific in-service
10 dates. Since the utility will have intimate knowledge of
11 the in-service date and have control of the timing of the
12 ECRM filing, these dates can obviously be managed to
13 minimize any timelines. Also the implied insertion is
14 that these type projects happen more often than twice a
15 year.

16 The Commission only need look at the KCPL
17 regulatory plan documents to find that major construction
18 projects are spread out over several years and are known
19 with some precision well in advance of the actual
20 occurrence. In contrast, the ISRS projects are part of
21 ongoing construction programs consisting of small
22 individual products that become in service after a short
23 construction period often without any allowance for funds
24 used during -- used during construction even being
25 appropriate, that is they're projects of less than 30

1 days.

2 These projects are closed to plant in
3 service each and every month, and some of these
4 replacement programs involve -- involved in ISRS will take
5 upwards of 40-plus years to complete.

6 Public Counsel's comments on the
7 Commission's proposed ECRM rules were provided under the
8 belief that the purpose of those rules is to implement SB
9 179 and maintain the Commission's obligation to ensure
10 that ratepayers receive safe and adequate service at just
11 and reasonable rates.

12 In contrast, the utility stakeholders
13 appear to have multiple other goals in their comments that
14 are not supported by either SB 179 or the Commission's
15 obligation to ratepayers as found in the case law cited in
16 Public Counsel's filed comments on January 2 in this
17 docket. As mentioned earlier, the utility stakeholders
18 believe the ECRM should ignore capital costs in base rates
19 in order to increase ECRM revenues to address regulatory
20 lag associated with other nonrelated costs.

21 AmerenUE further argues that the ECRM will
22 not only be, quote, useful to utilities, close quote, but
23 also that it will, quote, encourage these investments,
24 close quote.

25 SB 179 does not have a purpose section, and

1 it does not address anywhere else in the statute either of
2 those alleged benefits. However, SB 179 does set out the
3 standard that the costs must be incurred, quote, to comply
4 with any federal, state or local environmental law,
5 regulation or rule, close quote.

6 Public Counsel fails to see any
7 justification to charge ratepayers excessive revenues in
8 order to incent the utilities to comply with laws,
9 regulations or rules properly enacted by governmental
10 bodies. The incurrence of environmental compliance costs
11 should result from implementing a utility's environmental
12 compliance plan. This plan should be based on prudent
13 planning and prudent implementation and not reliance on a
14 single issue cost recovery mechanism to provide such an
15 incentive.

16 Nothing in SB 179 suggests that it was
17 intended to incent a utility to prefer certain
18 environmental investments over others to encourage a
19 utility to make any particular investment sooner than it
20 would otherwise be appropriate.

21 In conclusion, this Commission is charged
22 with protecting the public. The ECRM tilts the ratemaking
23 process towards utility interests. The Commission must
24 create rules implementing ECRM that does not diminish its
25 ability to ensure that rates are just and reasonable and

1 that excess earnings are not a result of the process.

2 The utility stakeholders assert that there
3 are multiple consumer protections in SB 179 and in the
4 proposed Commission rules. Their characterization is that
5 these protections are adequate for the ratepayers'
6 interests. However, the ratepayers' interest is measured
7 by the goal of safe and adequate service and just and
8 reasonable rates.

9 These so-called protections touted by the
10 utility stakeholders included in the Commission rules are
11 only tools. They are not the actual protection provided
12 by this Commission. Absent the additional language
13 proposed by Public Counsel, the so-called consumer
14 protection tools may be used, but they will not result in
15 just and reasonable rates absent looking at earnings.
16 Absent the use of these tools as modified by the
17 non-utility commenters to determine or ensure that rates
18 are just and reasonable, ratepayers will not be protected
19 by the very Commission charged with that responsibility.
20 Adopting the changes proposed by the utility stakeholders
21 would severely limit the Commission's ability to fulfill
22 its obligation providing protection to consumers by
23 establishing just and reasonable rates.

24 Appreciate the opportunity to come before
25 you today, and would look forward to any questions you-all

1 have.

2 CHAIRMAN DAVIS: Everybody get their
3 fingers on the button because there may be a whole flurry
4 of objections.

5 QUESTIONS BY CHAIRMAN DAVIS:

6 Q. Mr. Trippensee, in your testimony you
7 alluded to the -- to the settlement of -- what was it, the
8 rate case, WO-2004-0116?

9 A. I believe that's right, yes. Yes, I did,
10 sir, and the Commission's order adopting that settlement
11 which was a rate reduction.

12 Q. Right. Isn't it true, Mr. Trippensee, that
13 there was, in fact, a previous settlement in that case by
14 at least some of the parties? You don't recall that?

15 A. I don't recall. I recall what the result
16 of the case was, which was an overall gross revenue
17 reduction in that case.

18 Q. So --

19 A. And a rebasing.

20 Q. So you'd have no way of knowing if there
21 was a -- a prior settlement offer on the table that may
22 have been proposed by Staff, quote, because they no longer
23 had the votes to get that approved with Commissioner
24 Simmons' departure and the untimely passing away of
25 Commissioner Forbis?

1 A. I'm only referring to the result of the
2 case.

3 Q. You're only referring to the result of the
4 case.

5 CHAIRMAN DAVIS: I'll pass for right now,
6 Judge.

7 JUDGE DALE: Commissioner Clayton?

8 QUESTIONS BY COMMISSIONER CLAYTON:

9 Q. It was back at a different time, back in
10 2004. Mr. Trippensee, can you -- how many categories of
11 issues or -- can you summarize Public Counsel's position
12 with regard to the rule, the principal problems that you
13 have with the draft that's before us right now? I want
14 to -- kind of a high level generalization. Don't get into
15 specific language.

16 A. I think the basic concern that Public
17 Counsel has is that while the rule as it is written
18 contains several things that have been labeled consumer
19 protections, there is no purpose for the use of those
20 rules -- or those tools set out in the rule, and the
21 ultimate purpose, and what this Commission's charge is, at
22 least as I've been informed by counsel, is to set just and
23 reasonable rates. In this state, just and reasonable
24 rates are based upon rate of return regulation.

25 Q. Okay. That's too high a level. Let's --

1 A. That will be the first time.

2 Q. I got your point. I had time to think
3 about that while you were reading your comments. Let's
4 drop down a little -- a level. General categories that
5 Public Counsel thinks -- well, maybe I should ask the
6 question this way: Is it Public Counsel's position that
7 this rule is not salvageable in any way?

8 A. No, it is not.

9 Q. It is not salvageable, so we shouldn't pass
10 any ECRM rule is what you're saying?

11 A. Maybe I answered a negative with a
12 negative. I'm not sure.

13 Q. You guys are driving me crazy with the
14 double negatives, so --

15 A. I'm trying not to.

16 Q. You're saying that it is salvageable with
17 amendments?

18 A. We believe that with --

19 Q. Yes or no?

20 A. Yes.

21 Q. Okay. So give me the general categories of
22 things that Public Counsel needs changed for Public
23 Counsel to support the rule. Do you know? Or do we need
24 to go to Mr. Kind?

25 A. No, it's not so much Mr. Kind. Probably

1 Mr. Mills, but --

2 Q. Feel the power.

3 A. As far as the changes that we have
4 proposed, the first one is we think that the environmental
5 revenue requirement as contained in the rule should be
6 maintained. The utilities --

7 Q. I understand that. I got that from your
8 testimony. But that's not changing it. What changes need
9 to occur to this rule for you to support it?

10 A. We think that the deferrals --

11 Q. Okay. Let's talk about the deferrals.

12 A. -- need to be -- a test needs to be done
13 before those are collected from ratepayers.

14 Q. Okay.

15 A. To ensure --

16 Q. An earnings test or something like that?

17 A. An earnings test, and it is -- the earnings
18 test is not for the changes in environmental cost. What
19 the earnings test relates to is the deferrals. The
20 deferrals are separate and distinct from the environmental
21 revenue requirement. The deferrals relate to revenues
22 over and above the two and a half percent cap that may --
23 that are not billed out to customers.

24 Q. And when should that earnings test occur?

25 Does that happen -- does that happen at any time there's

1 an amendment?

2 A. No, sir.

3 Q. Or a change to the -- when does that test
4 occur?

5 A. It should occur during the rate case
6 required by the ECRM rules, because at that point --

7 Q. But by definition that's what a rate case
8 does, right?

9 A. Not -- with regard to the deferrals, that's
10 what -- I'm just saying that's when it should occur. To
11 try --

12 Q. The second rate case -- the rate case that
13 follows?

14 A. Right.

15 Q. Okay. So there needs to be an earnings
16 test. So you're saying -- now, an earnings test is a --
17 at any moment in time on what the company's earning, I'm
18 assuming, or are you wanting to go back and look at what
19 they've earned in the years while --

20 A. When the deferral occurred, because what
21 happens is, let's say for sake of discussion they had an
22 authorized rate of return of 10, which you used earlier
23 today. During the period they got -- first year, they got
24 an ECRM, two and a half percent increase. They also had
25 to defer, say, 6 percent. If you would have included that

1 6 percent in their calculation of their actual earnings
2 for that period and they still exceeded 10 percent, what
3 you are doing is, raising -- by deferring it and allowing
4 subsequent recovery, you're raising the earnings for that
5 period up to about 16 percent or greater, depending on the
6 extent it's above 10, and then allowing the rate --
7 requiring the ratepayers to recover, to pay them in cash
8 in a subsequent period.

9 And Public Counsel just does not believe
10 that you should allow the manipulation of earnings to
11 defer and get subsequent -- for subsequent recovery of
12 monies when they're in an excess earnings situation.

13 Q. Okay. Next issue.

14 A. Some of the changes we provided were simply
15 request for additional information in a format consistent
16 with the surveillance required under the rules so that you
17 can do the initial analysis up front 5to the need for this
18 rule.

19 Q. So is it -- is it the timing of
20 surveillance or is it the quantity or quality of
21 surveillance?

22 A. It's not the quality of the surveillance.
23 When they make an application, they are required to submit
24 data, and I think it's in the format of the current PSC
25 Staff's surveillance. That data is very high level. The

1 surveillance data required under this rule, which is
2 consistent with the fuel adjustment rule, is much more
3 precise.

4 And our suggestion is, if you're going
5 to -- when they apply, that they present the information
6 at the time of application in a manner consistent with
7 what they're going to do after the application, assuming
8 it's approved. You've got two different -- you've got the
9 information coming in in two different formats, very high
10 level before the application, much more detailed after the
11 application. It needs to be consistent, and that was our
12 concern there.

13 Q. All right. Next issue?

14 A. I believe -- let me get to Chapter 20
15 because that's where most of our -- we also include a
16 paragraph 11 in Chapter 20 that addresses an incentive or
17 performance-based program to provide that option to the
18 Commission. I believe it was referred to earlier by, I
19 believe, Mr. Conrad or something where they're talking
20 about how much goes in base rates or how much through the
21 ECRM, whether you would exclude 5 percent like you've done
22 in the fuel adjustment or something along that line. That
23 tool was not given to the Commission or the Commission did
24 not give itself that tool.

25 Q. Is this kind of a skin in the game type of

1 thing that came up in the fuel adjustment clause
2 discussion?

3 A. Yes.

4 Q. I understand.

5 A. And I believe that would -- those items
6 would cover the high level concerns we had. I mean, we
7 had some minor word changing, you know, insertion of the
8 word detrimental to the public or in the public interest,
9 a couple different places, but just to clarify again what
10 the Commission's obligation is.

11 MR. KIND: Russ, if I could add to that, I
12 don't think you mentioned the threshold test, as to when
13 the Commission's determination in the initial rate case as
14 to whether it's appropriate to approve a utility getting
15 an ECRM and making an assessment based in that initial
16 rate case on whether they're getting an ECRM is likely to
17 lead to an excess earnings situation over the next four
18 years.

19 MR. TRIPPENSEE: What that is referring to
20 is that -- that information before application would help
21 provide that information for the threshold, for a test to
22 determine whether they need an ECRM, just as the
23 Commission in a fuel adjustment clause approved one for
24 Empire but did not approve one for AmerenUE. The parties
25 need information to make those determinations.

1 BY COMMISSIONER CLAYTON:

2 Q. We gave to Empire?

3 A. Excuse me. Missouri Public Service.

4 Excuse me.

5 Q. Aquila, yeah.

6 A. Aquila. Well, used to be Missouri Public
7 Service. I'm showing my age.

8 Q. What else you got?

9 A. I believe that would be the major
10 components of the changes at a high level.

11 Q. What does Public Counsel believe the
12 appropriate threshold of a company earning higher than its
13 authorized rate of return, what ought to trigger a
14 complaint?

15 A. Probably a very high level would be
16 somewhere between 100 and 150 basis points. That, and
17 that is based on simply the difference between what Public
18 Counsel and other parties feel the market is requesting
19 and what some of the rates of return the Commission has
20 authorized, because if that difference occurs, that could
21 immediately eliminate the rate case.

22 There would also have to be, as Mr. Meyer
23 alluded to, some additional detailed analysis seeing
24 what's driving the increase, whether it's capital or --
25 which would probably raise the threshold or whether it's

1 expenses or revenues, increased revenues, which would
2 lower that threshold. So that's where the subjectivity in
3 my mind comes in.

4 COMMISSIONER CLAYTON: I don't think I have
5 any other questions, Judge. Thank you, Mr. Trippensee.

6 JUDGE DALE: Commissioner Appling?

7 COMMISSIONER APPLING: No questions.

8 JUDGE DALE: Commissioner Jarrett?

9 COMMISSIONER JARRETT: No questions.

10 JUDGE DALE: Thank you, Mr. Trippensee.

11 Let's go ahead then with Noranda.

12 MR. CONRAD: Your honor, on behalf of
13 Noranda, we had filed comments on the 3rd. They were
14 originally in draft prepared by Mr. Swogger, who departed
15 this coil on the 29th of this month, and we're very
16 appreciative of the Commission's willingness to accept
17 those one day out of time.

18 We do have for you today for you to
19 question and to support those comments Mr. Steve Feeders,
20 and I would ask him to begin to move at the direction of
21 the witness stand. Mr. Feeders is perhaps someone who's
22 known by one or two of the Commissioners already. He has
23 been involved here as a witness at the Commission before.
24 He is manager of the St. Jude Industrial Park, the public
25 communications director for Noranda, and will be assuming

1 the responsibilities that Mr. Swogger had with respect to
2 the electrical operations of the plant.

3 We also have here, if the Commission has
4 technical questions about ratemaking and that type of
5 stuff Don Johnstone who has appeared before on behalf of
6 Noranda as a consultant similar to the process that we had
7 for Staff. I would encourage your honor to ask both of
8 them to rise and be sworn and then we can kind of tag team
9 depending on what the questions for the Commission is.
10 Once we do that, Mr. Feeders will take issues, by your
11 leave, a moment or two and highlight those comments and
12 just gloss over them and then take whatever questions the
13 Bench may have.

14 COMMISSIONER CLAYTON: Judge, I don't want
15 to interrupt, but I don't know if we need to have
16 everybody read like we had before. I appreciate the
17 oration, but --

18 MR. CONRAD: Judge, these have been
19 filed -- these have been filed earlier with EFIS, so if --
20 I do have copies here if anybody doesn't have it. They're
21 not changed from that. By your leave, whatever.

22 JUDGE DALE: That will be fine. If both
23 witnesses will stand and raise your right hand, please.

24 (Witnesses sworn.)

25 JUDGE DALE: Thank you. Be seated. You

1 may proceed.

2 STEVE FEEDERS testified as follows:

3 MR. FEEDERS: Thank you very much.

4 Needless to say, I did not plan to be here today. My good
5 friend George Swogger left the earth and did a great job
6 for us, and we're appreciative of the work that he did.

7 But I have been at Noranda the last ten
8 years working in the areas of economic development,
9 organizational development and communications, public
10 affairs, so I have been working closely with George and
11 with others, energy being one of the main topics for
12 Noranda since it's a third of our cost.

13 Noranda is the largest customer of AmerenUE
14 and the largest consumer of electricity in Missouri. Our
15 475 megawatt load continues seven days a week and
16 maintains over 98 percent load factor. So as Missouri's
17 only aluminum smelter and one of the few remaining in the
18 U.S., and as an industrial consumer that is responsible
19 for over 10 percent of the United States' aluminum
20 production, Noranda must continuously examine its own
21 operations, so we do so in compliance with our applicable
22 environmental regulations. We remain vigilant against
23 cost increases, the very aspect of our business, including
24 of course electricity, and the market will penalize us
25 heavily if we don't do that.

1 Noranda also expects its suppliers to have
2 good efficiency and low cost. That's the way we do
3 business. And the proposed rule will implement provisions
4 of Senate Bill 179 which was signed into law by Governor
5 Blunt in 2005.

6 Basically, in summary, at a very summary
7 level, Noranda understands the applicable provisions of
8 Senate Bill 179 and underlined here just to make the point
9 any automatic pass through cost under a rider mechanism
10 such as that under consideration is of concern to Noranda,
11 because if implemented AmerenUE will become more insulated
12 from the economic consequences of its own decisions
13 regarding environmental expenditures and be in a position
14 to shift these costs to captive customers.

15 Some other notes that I'd like to point out
16 is that the Commission may determine the portion of
17 prudently incurred environmental costs may be recovered in
18 an ECRM and what portion shall be recovered in base rates.
19 That was addressed earlier. Noranda understands the
20 proposed rule. Noranda encourages an approach that would
21 maintain a healthy measure of the beneficial incentives in
22 air and base rates. Noranda understands that proposed
23 rule 2D provides for such an approach.

24 In addition, Noranda also understands that
25 Senate Bill 179 provides for a cap on rate increases due

1 to the ECRM. Noranda supports the concept of rate
2 stability and low rates. A rate cap can offer some
3 protection to this end. And rule 2D is an important
4 provision because it provides the flexibility to maintain
5 some of the incentive inherent in the traditional base
6 rate approach if it becomes necessary to establish an
7 ECRM.

8 Going on down, a few other highlights to
9 make. The interest of customers and investors are aligned
10 or should be aligned inasmuch as efficient operations and
11 low cost will benefit both. That alignment is very
12 important, particularly if you look -- the regulation can
13 and should work to keep the interest aligned, but there is
14 the particular danger again in the automatic rate
15 adjustment mechanisms such as the ECRM addressed in the
16 proposed rules. The danger's manifest and the cost may be
17 passed through more or less automatically, outside of the
18 context of the base rate proceeding.

19 So a defense often offered for automatic
20 adjustment mechanisms is that periodic prudence reviews of
21 the eligible cost provide adequate protection. In fact,
22 these reviews offer only limited protection. The
23 essential goal, I think, to wrap it up, is to ensure
24 utility attention to the best possible decisions and the
25 lowest possible costs. Section 2D allows the Commission

1 to keep a portion of the environmental cost recovery in
2 base rates, thereby preserving a measure of the alignment
3 that we talked about of interests that have served
4 Missouri well.

5 Section 2D says the Commission may, in its
6 discretion, determine what portion of prudently incurred
7 environmental costs may be recovered in an ECRM and what
8 portion shall be recovered in base rates. So we're
9 looking for balance. We're looking for alignment and want
10 to make sure there's no automatic pass through of these
11 costs. It's well thought out.

12 When we look at the way we do our safety
13 production and environmental compliance, those are three
14 of our major goals every year, 100 percent environmental
15 compliance. We know it costs money to do that, but you
16 have to measure your cost and you have to be very careful
17 how you use that money, and that's the concern that we
18 have. That's the highlights anyway.

19 JUDGE DALE: Chairman?

20 CHAIRMAN DAVIS: No questions. Thank you,
21 Mr. Feeders.

22 JUDGE DALE: Commissioner Clayton?

23 COMMISSIONER CLAYTON: No questions.

24 JUDGE DALE: Commissioner Jarrett?

25 COMMISSIONER JARRETT: No questions.

1 JUDGE DALE: Commissioner Appling?

2 COMMISSIONER APPLING: I have no questions.

3 JUDGE DALE: My goodness, there are no
4 questions for you. Don't look so disappointed. At this
5 point let's take a break 'til five after three.

6 (A BREAK WAS TAKEN.)

7 JUDGE DALE: Go back on the record. It has
8 come to my attention that an individual attorney had been
9 inadvertently omitted from the entries of appearance.

10 MR. FISCHER: Yes, Judge. I filed written
11 entry of appearance on behalf of Kansas City Power &
12 Light, but I was out of the room whenever you took oral
13 entries, so please let the record reflect the appearance
14 of James M. Fischer for Kansas City Power & Light.

15 JUDGE DALE: Thank you. We're ready for
16 AARP --

17 MR. COFFMAN: Okay.

18 JUDGE DALE: -- and Consumers Council.

19 MR. COFFMAN: I just had a few comments.
20 If I can just go ahead and speak from here or do you want
21 me to --

22 JUDGE DALE: That's fine.

23 MR. COFFMAN: I won't reiterate the things
24 said in AARP's initial comments, but those remain our --
25 our positions on these issues. Just from a very high

1 level, I think it should be clear for anyone who was part
2 of the legislative process or following the issues in 2005
3 when Senate Bill 179 passed that the policy discussions by
4 legislators and fairly everyone involved were professing
5 that this was a piece of legislation that was going to be
6 balanced as far as ratepayers and utility shareholders are
7 concerned.

8 And while AARP and other organizations did
9 not necessarily agree, there were -- the legislative
10 intent clearly appeared to be that there were going to be
11 protections for consumers and that some of the protections
12 were not going to be in the -- within the words of the
13 statute but that they were going to come later when and if
14 the Commission decided to promulgate rules and decided to
15 adopt these things. And we feel that the rule as drafted
16 still has a ways to go before it would have the type of
17 consumer protections that would really be significant.

18 Let me just first say, before I mention the
19 three things that AARP is asking for, that we are assuming
20 that the Commission has proper rulemaking authority to
21 proceed. I know there's some question about under what
22 statute the Commission's operating, and I believe in the
23 Secretary of State proposed rule it cites 386.250. That's
24 typically been the statute that refers to terms of service
25 and billing issues, not ratemaking issues. There is a

1 specific -- I know it's confusing because the statute
2 itself, 386.266 refers to a specific grant of rulemaking
3 authority which expired in -- August 28 of 2005. I'm not
4 addressing that issue with these comments. I'm assuming
5 that the Commission does have proper rulemaking authority
6 to go forward.

7 The first issue that AARP wants to address
8 is the possibility that this mechanism being as
9 significant as it is and permitting single issue pass
10 throughs of costs in between rate cases could very likely
11 result in an overearning situation, allow an increase at a
12 time when other costs are going down and result in a
13 utility earning beyond its ROR cap, revenue requirement
14 cap. So that is an important consideration.

15 We would prefer something that -- along the
16 lines of what's been called an earnings test. Various
17 things have been called an earnings test, but some type of
18 very serious review about whether before the fact there
19 is, in fact, evidence that without such a mechanism there
20 would be serious financial harm to the integrity of the
21 utility. And although I know that in the fuel adjustment
22 clause this Commission chose not to do that, I think that
23 it would be appropriate in this case, and if not on the
24 front end, at least I think the Commission by rule can
25 clarify that it can be done on the back end in some way,

1 and this would be a -- an earnings review that would take
2 place not during -- because I understand the concern is
3 that you not have many rate cases, because the point was
4 to not have a full rate case, and we understand that in
5 each of these years where there would be changes in the
6 ECRM, some believe that's not workable or it would be too
7 much.

8 What we're talking about with an
9 after-the-fact review, and this was mentioned in the
10 comments of MIEC and the Office of the Public Counsel, is
11 that you would look at -- now that you have all the data
12 collected and you're already in a rate case where you're
13 looking at all relevant factors, you can look back at
14 these previous annual periods to determine if there
15 were -- there was exactly an underearnings situation or
16 whether there was a overearning situation and not allow --
17 at least not allow deferrals to be recovered for periods
18 where there had been overearning. Or another way it could
19 be done would to be recognize some refunds or some offset
20 on future ECRMs if there had been charges collected from
21 ratepayers during a period of overearning.

22 So I would ask that you take a look at that
23 and recognize that that is different than the type of
24 earnings test issue that we talked about with fuel
25 adjustment clause. Maybe they wouldn't have the

1 workability issue, although I'm sure there will be
2 disagreement about that.

3 The other thing I want to talk about
4 generally is, just emphasize again how large this is. Of
5 all the surcharges that consumers before the Commission
6 have complained about and complained about because of the
7 risk shifting and because of the possibility of
8 overearning and because of the way that it reduces the
9 incentive for the utility to be cost efficient and how
10 that creates worries that that's going to lead to further
11 rate increases, this particular mechanism has the
12 potential at least to be much larger than the fuel
13 adjustment clause.

14 Now, it all comes down to what you define
15 as environmental cost, and it is my belief that this rule
16 as drafted, as proposed, does not go far enough in really
17 circumscribing and drawing a line around what
18 environmental costs are. I know there has been a lot of
19 effort on it. One of our proposals is that perhaps this
20 could be limited further to only those rules that go into
21 effect since the last rate case.

22 And there were some utility comments that
23 would destroy the rule, it wouldn't be of any use, but I'm
24 not convinced of that. It seems that -- to me that if you
25 -- if there are costs coming down and are just about to

1 hit the utility, there are ways that you can recognize
2 that in a rate case. Perhaps you have a cost and it's
3 expected to spike. You can certainly go to the high end
4 of what's recommended in your rate case procedure and that
5 the ECRM I think should really only be used for things
6 that weren't anticipated or it wasn't anticipated to be as
7 sharply increasing or as volatile and under some of the
8 same criteria used for the fuel adjustment clause but not
9 for just any expense that has been normally recovered.

10 And the deferral really is unlimited in the
11 statute, and I would -- and the proposed rule really
12 doesn't address the deferrals at all. It just addresses
13 the two and a half percent year by year ECRM.

14 So I would ask that the Commission look at
15 putting at least some reasonable limits on this deferral
16 and how it would be recovered. One way would be to, as I
17 was saying earlier, do an after-the-fact review of the
18 periods during which the deferrals occurred to make sure
19 that the utility was not overearning or to require some
20 offset in the future, or to put a cap on how much could be
21 deferred, and there have been various proposals made to
22 you here.

23 I know Commissioner Clayton had asked about
24 some of the possible controversies we're going to get
25 into, and I'm sure that this is not going to be an easy

1 rule. The ISRS, the I-S-R-S, has not proven to be very
2 controversial, and that is because we know what we're
3 talking about with the pipes and the procedure's very
4 explicit. This is still very open ended, and I want to
5 emphasize that again, the environmental costs are not well
6 defined, and depending on how you view certain practices
7 and investments, environmental regulations are becoming so
8 pervasive, you can make an argument that almost everything
9 is related to something that is done to comply with EPA
10 regulation that measures the output of what an electric
11 utility does.

12 And then we have I think what has been
13 mentioned briefly, the interplay between this rule and the
14 fuel adjustment clause. Many of the things that are
15 regulated by the EPA and DNR are fuel related -- fuel
16 related, and the problems with deferral with, you know,
17 the oversimplifying, double dipping or double recovery is
18 inherent in the whole deferral concept, but when you mix
19 that with the fuel adjustment clause, it's going to be
20 rather tricky. And I know there's been an effort to try
21 to make sure those aren't double counted in each of these
22 mechanisms, but they're almost certainly to be going --
23 knowing how these things work -- work out and the
24 different opinions that accountants and engineers have,
25 we're likely to reach some impasse. SO2 allowances, for

1 instance, or other tradeable allowances are both
2 environmental related and also tied in ways to fuel, very
3 complicated.

4 Another issue that I wanted to emphasize
5 was the difficulty with prudence, and we all agree and the
6 rule does require that any cost be prudent, but when you
7 have these single issue adjustments, these -- these
8 proceedings in between a rate case, you don't have the
9 ability to dig in and do a thorough prudence review, and
10 often it is only Staff of the Commission or perhaps the
11 Office of the Public Counsel that can pull together the
12 experts and the resources to do that. Utility controls
13 most of the information, and history has shown it to be a
14 very, very heavy burden to carry to actually prove that
15 something was not prudent, even though the utility is
16 supposed to bear the burden of proof in a rate case.

17 The problems that these mechanisms create
18 is almost a too early -- what I call a too early too late
19 problem. In the mechanism itself, we're often told that
20 it's too early to look at these issues. Maybe when you
21 get to the rate case we can look at them. But once you
22 get to the rate case, well, those expenditures, those
23 investments have already been approved in the mechanism.
24 So it creates a lot of problems for those of us that want
25 to make sure that these very serious investments are

1 scrutinized closely.

2 Another issue that could come up relating
3 to prudence could be something like clean -- environmental
4 cleanup costs, and I wanted you to think about that,
5 because often you -- it's hard to get back to what was the
6 particular instance of prudent inquiry. Perhaps a -- you
7 had an environmental disaster. Cleaning up the results of
8 that disaster would be prudent, and everyone would agree,
9 but are the cleanup costs directly related to that? Or if
10 a utility's to buy a piece of property that has an
11 environmental liability attached to it, is it prudent for
12 them -- you know, at what point do you look at the
13 prudence?

14 One of the greater prudent issues that I
15 found with electric utilities and this is another point,
16 had to do with resource planning; is this utility relying
17 too much on one type of fuel, are they relying too much on
18 natural gas plants causing their -- their rates to be too
19 volatile, or is this utility relying too much on coal,
20 and are going to get hit too hard when all the global
21 issues begin to hit.

22 CHAIRMAN DAVIS: I'm sorry. Mr. Coffman,
23 isn't it a little bit late to be arguing that now?
24 Because for years here at this Commission if anybody would
25 have come in and argued anything but the lowest cost

1 generation, wouldn't you and everybody else here on the
2 consumer side have been pounding the table saying that's
3 unconscionable?

4 MR. COFFMAN: Yes. We look for the lowest
5 cost generation. The point I'm making is that often the
6 question about whether the course of action is prudent
7 involves a much longer term resource planning
8 decision-making, and when you're looking at expenditures
9 made in one year, you're not looking at the facts in a
10 broad enough scheme to --

11 CHAIRMAN DAVIS: So we should be looking
12 over a 20, 40-year event horizon and not just a one to two
13 to five-year event horizon?

14 MR. COFFMAN: In some cases, yes.

15 CHAIRMAN DAVIS: I guess my question is --
16 and I apologize for cutting you off. I wasn't here then,
17 but it seemed to be quite fashionable a decade ago to tell
18 folks like Empire Electric and Aquila just go out and
19 build some natural gas fired generation, you know, we're
20 the Saudi Arabia of natural gas here in Missouri, or --
21 well, not Missouri, but here in the United States, and
22 it's cheaper, you know, blah, blah, blah, and now it's
23 like, okay, well, now that they've done it, ten years
24 later let's come in and contest it. Is that what I'm
25 hearing you say?

1 MR. COFFMAN: I'm not -- I'm not suggesting
2 that this -- that this Commission has not wrestled with
3 these issues or that it's easy to figure out the answer.
4 I'm merely suggesting that reviewing those kind of
5 prudence issues are going to be more difficult in a
6 regulatory scheme that shifts so much of rate changing to
7 these in between rate case issues. It's not -- it's
8 looking at a smaller and smaller picture, and --

9 CHAIRMAN DAVIS: Point taken. Point taken.

10 MR. COFFMAN: I -- I understand your
11 frustration. So I apologize if I was a little bit
12 rambling or overly broad in those comments, but AARP
13 believes that these -- it is a very serious issue and we
14 hope that you do everything that you believe is possible
15 to be done in this rule to limit the impact and make sure
16 that it's only done in those cases where it's absolutely
17 needed to protect the financial integrity of the utility.

18 And the comments that have been made by
19 AARP are also -- have been adopted by Consumers Council of
20 Missouri. I just want to add that me too from that
21 organization as well.

22 JUDGE DALE: Before we go to questions, it
23 occurs to me that I failed to swear you in. So --

24 MR. COFFMAN: Can I retroactively?

25 JUDGE DALE: Yes.

1 (Witness sworn.)

2 JUDGE DALE: Thank you. Now, are there any
3 Commissioner questions?

4 QUESTIONS BY CHAIRMAN DAVIS:

5 Q. Mr. Coffman, you recall the recent AmerenUE
6 rate case?

7 A. Yes.

8 Q. This Commission chose not to award Ameren a
9 fuel adjustment mechanism in that case. Do you recall
10 that one of the reasons associated with that decision was
11 the -- was the feeling that off-system sales margins would
12 offset rising fuel costs?

13 A. Yes.

14 Q. So off-system sales margins and efficiency
15 are also supposed to offset these, and I don't want to put
16 words in your mouth, but my impression is that you
17 characterized these as some very significant environmental
18 expenditures that are probably going to have to be made?

19 MR. COFFMAN: There are some. You know, if
20 this was -- if this rule was limited to things such as
21 scrubbers and baghouses and things that are directly
22 related to clean air, I think we might be able to comp --
23 you know, reach a compromise agreement. I mean, I think
24 there are some expenditures that I would agree are
25 extraordinary and important enough to be included, but

1 this rule really doesn't -- it doesn't itemize the
2 specific types of things. And I know there's going to be
3 new technology, but it's worrisome that the definition of
4 environmental compliance is so broad yet. And that I know
5 everyone's focused on this two and a half percent a year,
6 but there really isn't any limit if you consider the
7 deferral that could then be dumped into the subsequent
8 rate case.

9 Q. Okay. But obviously the length of time
10 is -- the charge can't last for longer than four years,
11 correct?

12 A. Yes, but there's the potential for a
13 deferral in each of those two or three or four years up to
14 the next rate case that, depending on who you talk to,
15 that that could be an -- that could create a double
16 dipping lump of cost in the rate case that's even greater
17 than the two and a half percent per year accumulating.

18 Q. So it would lead to more rate shock or --

19 A. Certainly higher rates than would otherwise
20 be the case under --

21 Q. And I'm sorry. How would it be -- aren't
22 these expenses, I mean -- the expenses have to be made and
23 incurred, correct, and they have to --

24 A. Yes. Some do, yes.

25 Q. Okay. And so I'm just trying to figure

1 out, are you telling them don't make the expenditures --
2 or give these utilities some advice here, Mr. Coffman,
3 tell them how they are supposed to operate so that they
4 can actually have an opportunity to earn their allowed
5 rate of return under your scenario. When do they time
6 their expenditures?

7 A. Well, I'm -- I don't believe that frequent
8 rate cases are an evil. I think that --

9 Q. Okay.

10 A. You know, maybe that's one way to answer.
11 When we can look at all the costs at one time and all the
12 investments and we can look at the entire balance sheet
13 and make sure that all relevant factors are considered,
14 that is the best way to treat everyone fairly, and
15 that's -- that's a consumer perspective, consumer advocate
16 perspective.

17 And I hear folks saying that it's too
18 costly to have frequent rate cases, but if we had rate
19 cases with these electric utilities every -- you know,
20 every other year or even every year, that wouldn't
21 necessarily concern me from a policy perspective because
22 there wouldn't be as much concern that there were unfair
23 charges or double charges and all this unfair gaming of
24 the system that we're fretting about.

25 Q. On the concept of deferral, do you think

1 there should be -- is there a reasonable amount or
2 percentage or should it vary by utility on the amount, you
3 know, that could be deferred before you trigger another
4 rate case?

5 A. Are you asking for what I would suggest as
6 a cap?

7 Q. Yes. I'm asking you for your suggestion.

8 A. I'm not sure -- I think one party had
9 suggested only -- only deferral up to two and a half
10 percent more above the two and a half percent. That
11 might -- I mean, that's still -- that's still an awful lot
12 of money. I think I would prefer if the Commission
13 scrutinized what type of costs they were allowed and not
14 permit every environmental compliance cost to run through
15 the ECRM, but that you would select the things that are
16 either most significant or have some aspect to them that
17 they are extremely volatile and clearly outside the
18 control of management where you leave it at that.

19 You know, I haven't seen the arguments yet,
20 but I just fear that even under this rule, the creative
21 minds of those that have tens of millions, if not hundreds
22 of millions of dollars at stake are going to come up with
23 some rather interesting arguments about what is an
24 environmental cost. Now, you could either do that or you
25 could look at it the way you have in the fuel adjustment

1 clause area, you could allow less than 100 percent to flow
2 through. That would give you the skin and the game to
3 some degree. 50/50 or as you know in Aquila the 90/10
4 type of split. I mean, that's another way to, I think,
5 alleviate concerns about prudent practices.

6 Q. Do you think it's good for individual
7 consumers to have some of that, quote, skin in the game as
8 well?

9 A. Are you referring to energy efficiencies?
10 I'm not sure.

11 Q. Shouldn't -- shouldn't consumers -- don't
12 you think price signals are a means of informing consumers
13 maybe -- maybe one of the best ways to inform consumers
14 that their conduct is causing rates to rise?

15 A. Yeah, to some degree. I mean, the only --
16 caveat I would mention is that with -- with very low usage
17 customers and certain low income customers, there really
18 is a lot -- there's inelastic demands.

19 Q. Right. There's a certain amount of
20 inelastic demand that everyone needs that minimal --

21 A. And there is, I believe --

22 Q. -- amount of electricity?

23 A. You know, using electricity particularly to
24 heat your home and do some very basic things is a very
25 basic human need, but yes, I think there are some signals

1 that could be sent through rate design that are positive
2 and would encourage energy efficiency.

3 Q. Now, back to your position about, you know,
4 what sort of regulations, decisions should be covered and
5 what not? Are you familiar with -- and is it the River
6 Keepers case that is currently pending in federal court
7 right now?

8 A. No, I'm afraid I do not.

9 Q. Okay. Well, there's a -- it's my
10 understanding that there's a case out there working its
11 way through the federal court system, possibly pending a
12 motion at the Supreme Court for certiorari concerning, I
13 guess it's one of the environmental laws that was passed
14 20, 30, 35 years ago, and it was my impression that,
15 depending on how the court interprets that decision, that
16 utilities could be required to put up cooling towers for
17 every power plant that's out there in existence, which
18 could be a significant expense. Now, under your scenario
19 would that be covered or would it not be covered?

20 A. As a new regulation you mean?

21 Q. Yes.

22 A. Well, that's an interesting question
23 because you're saying it's a rule or a law that has not
24 been enforced.

25 Q. Not in that manner, but you've got

1 environmental groups seeking its enforcement in this
2 manner.

3 A. I would consider that a new regulation if
4 it's something that has not been considered, it's an
5 obligation and the court makes it very clear that it is in
6 a sudden decision, yeah. You know, maybe the way to
7 express this -- this amendment is not as a new regulation
8 but as something that was not contemplated in the rate
9 case, because the idea, one of the ideas with this
10 environmental surcharge is that it is to cover things that
11 happen after the rate case, and I just hope that this is
12 not used to include the kind of things or the magnitude of
13 costs that could have already been recognized in a rate
14 case where -- when -- even though it's based on a
15 historical test year, you're setting up for a perspective
16 rate rule.

17 Q. I guess I'm a little confused, because if
18 we are setting rates on a -- based on a historical, I'm
19 assuming you're not advocating that we go to future test
20 year?

21 A. No, sir.

22 Q. Okay. So we're setting base rate based on
23 a historical test year?

24 A. Uh-huh.

25 Q. So let's go back to the Ameren rate case.

1 BY CHAIRMAN DAVIS:

2 Q. Legally, do you think this Commission has
3 that authority to -- to set something in base rates
4 that -- that it would be prospective?

5 A. If it's merely projected, I'm not so sure.
6 If it -- but if it's known and measurable and we know it's
7 going to occur, then I think that --

8 Q. If it's -- I see some skeptical looks from
9 some of the other consumer advocates in the room here,
10 Mr. Coffman.

11 This is not same rope a dope that we get
12 from the utilities where most of them agree and then
13 there's one that comes in at the end and says, no, I don't
14 agree, is it?

15 A. No. I know there are others in this room
16 who represent consumer interests that don't --

17 Q. Don't subscribe to that theory?

18 A. Don't see this exactly the same way, but I
19 see it perhaps as a lesser evil.

20 Q. I think I agree with that statement. I
21 think it might be a lesser evil. Thank you, Mr. Coffman.
22 Those are all the questions I have.

23 JUDGE DALE: Commissioner Jarrett?

24 QUESTIONS BY COMMISSIONER JARRETT:

25 Q. Thank you. Mr. Coffman, were you here when

1 Mr. Trippensee was testifying?

2 A. I believe for at least most of it.

3 Q. And I think he testified that -- that he
4 could live with the rule with some changes. Is that
5 basically what your testimony is, that you could live with
6 the rule but given your testimony there -- with some
7 changes you could live with it?

8 A. I mean, AARP's preference would be that we
9 live in a world with no surcharges, no single issue
10 surcharges, but I think that there are some changes that
11 could be made that would significantly -- make it
12 significantly easier to live with, and our concerns are
13 generally consistent with the comments made by the Office
14 of the Public Counsel and with MIEC and with Mr. Feeders
15 of Noranda

16 COMMISSIONER JARRETT: Thank you,
17 Mr. Coffman. Appreciate it.

18 JUDGE DALE: Commissioner Appling, do you
19 have any questions?

20 COMMISSIONER APPLING: No questions.

21 JUDGE DALE: Thank you, Mr. Coffman.

22 CHAIRMAN DAVIS: Mr. Coffman, one question.

23 FURTHER QUESTIONS BY CHAIRMAN DAVIS:

24 Q. Would you rather have an AAO?

25 A. Than an ECRM?

1 Q. Uh-huh.

2 A. Of course, it all depends on the details,
3 but --

4 Q. Depends on the details?

5 A. Probably, yes, but I mean, there, you know,
6 I guess it depends on how big it is, how many costs. I
7 mean, are you talking about an AAO that would be for all
8 environmental compliance costs? I don't know if that's
9 much better.

10 Q. Right. I guess would it be practical to
11 try to figure out, what is the -- setting aside the whole
12 environmental rate base from non-environmental rate base,
13 and is it possible to apportion what the utilities are
14 spending -- can we compare to vegetation management where
15 we know what's being spent, you know, on tree trimming on
16 an annual basis now versus if they spend more than that in
17 subsequent years?

18 A. I'm not sure I'm following --

19 Q. Well --

20 A. -- the question.

21 Q. Obviously utilities -- or electric
22 utilities are engaged in environmental compliance
23 activities right now?

24 A. Yes.

25 Q. Is that a fair statement?

1 A. Yes.

2 Q. And we know -- I don't know how they're
3 booking that according to the Uniform System of Accounts,
4 but in lieu of this whole concept of environmental rate
5 base versus non-environmental rate base, would it be
6 feasible to construct where we determine, you know, for
7 instance, what -- what the utility spent on environmental
8 compliance in the preceding, you know, in the historical
9 test year or the four or five years preceding, and measure
10 that against, you know, whatever it is in the future test
11 period? Do you understand that at all?

12 A. Are you asking me a question about a
13 potential future test year proposal?

14 Q. No, I'm not asking you. I'm trying to stay
15 away from the whole future test year concept, but in terms
16 of --

17 A. Are you talking about a procedure that
18 would take place in a rate case or in a single issue
19 matter?

20 Q. You have the rate case, because I think
21 you're going to need a -- you're going to need -- well,
22 first of all, you need the rate case to trigger the ECRM
23 to begin with. And then the question is, do you think
24 there -- the -- looking at the environmental compliance
25 expenses is a better way -- if we were going to do it,

1 would you look at the environmental expenses or would you
2 look at the environmental rate base or would environmental
3 rate base still be part of something you measure against
4 the expenses that the company has been accruing or been
5 paying out of pocket in the past?

6 A. I'll have to confess, I have -- I have some
7 problem understanding how you're going to recognize the
8 environmental rate base, so to speak, in these mechanisms.

9 Q. Okay.

10 A. I will defer to Mr. Trippensee or the
11 accounting experts here.

12 Q. Okay. That's -- that's fair. Thank you,
13 Mr. Coffman.

14 JUDGE DALE: Ms. Vuylsteke?

15 MS. VUYLSTEKE: May it please the
16 Commission? I'm here on behalf of MIEC, and I would like
17 to make a few introductory comments, but Maurice Brubaker
18 is our witness and I intend to offer him for comments and
19 questions by the Commission.

20 I would like to mention that we support the
21 Office of Public Counsel's comments and proposed revisions
22 to the rule.

23 MR. BYRNE: Excuse me, Your honor. Do you
24 want to swear her in?

25 (Witness sworn.)

1 JUDGE DALE: Thank you, please proceed.

2 MS. VUYLSTEKE: We support the comments of
3 the Office of Public Counsel and their proposed revisions
4 and also those of the AARP and Noranda, and I just want to
5 emphasize a couple of things in introduction to
6 Mr. Brubaker's testimony.

7 First of all, we think that the rule's
8 failure to provide a protection or a mechanism that if a
9 utility's overearning it won't be able to recover the
10 surcharge, some protection against overearning, that
11 failure to do that really needs to be corrected in the
12 rules. That's the most important point I think that we'd
13 like to make.

14 Looking at SB 179, it does require that the
15 Commission only approve a surcharge if it's reasonably
16 designed to provide the utility with sufficient
17 opportunity to earn a fair return on equity. And a return
18 on equity that's in excess of the return that the
19 Commission has authorized is not a fair return, and so in
20 our view, the rules should reflect the statutory language.
21 That's a key protection the rules really should be
22 including.

23 A second concern that we have is really
24 more responsive to an argument by the utility that we
25 think is dangerous and concerning and that we would urge

1 the Commission to reject, and that's their proposal that
2 consumers be denied the benefit of capital decreases for
3 environmental investments in rate base at the time that
4 the environmental surcharge is established.

5 So, you know, although we agree with the
6 comments of the other parties, those are two concerns that
7 we would like to highlight, and at this time I would like
8 to ask Mr. Brubaker to step up to the stand.

9 Excuse me. I forgot to mention, we did
10 file reply comments that I think were inappropriately
11 filed given your ruling this morning. So what I'd like to
12 do is hand those out and basically have Mr. Brubaker adopt
13 those comments and then provide those as an exhibit into
14 the record.

15 JUDGE DALE: Thank you. That will be
16 Exhibit 5.

17 (EXHIBIT NO. 5 WAS MARKED AS AN EXHIBIT BY
18 THE REPORTER.)

19 MS. VUYLSTEKE: Should I hand those out at
20 this time or wait until Mr. Brubaker --

21 JUDGE DALE: Why don't you do that while
22 I'm swearing him in.

23 (Witness sworn.)

24 JUDGE DALE: Thank you. Please be seated.
25 Go ahead and begin.

1 MAURICE BRUBAKER testified as follows:

2 MR. BRUBAKER: My name is Maurice Brubaker
3 with the firm of Brubaker & Associates. I'm here today on
4 behalf of the Missouri Industrial Energy Consumers. Given
5 the hour of the day and what's already gone before, I'll
6 try to be very brief.

7 As counsel indicated, the primary issue
8 that we highlighted in our comments was the concern about
9 the potential for overearning if an ECRM is in place. We
10 suggested some language with our initial comments that
11 would allow the Commission if they could be persuaded by
12 the parties that it made sense to include in the ECRM some
13 mechanism that would allow for a subsequent review of
14 earnings and possible adjustment if it was found that the
15 utilities were earning too far above, or above their
16 authorized rate of return. It would not be a mandate, but
17 it would be something that the parties would have an
18 opportunity to persuade you that it made sense to do when,
19 A, you've established an ECRM, B, you continued it, or C,
20 you modified it.

21 The utilities like to say, well, we're not
22 going to overearn, and I think the response to that is if
23 you're not planning on overearning, you don't think you
24 are, then you're not harmed by having the provision, on
25 the other hand if at some time you do overearn, then

1 having the provision is protection for the consumer. And
2 that's what we're basically looking for.

3 The second proposal that we made, which
4 turns out to be the same as Public Counsel's, is that when
5 it comes to the deferred costs that can be accumulated
6 because they exceed the cap, when you actually get around
7 to looking at whether or not the utility should be allowed
8 to collect those, you do a look back and see whether or
9 not the utility's earned enough to cover those costs or
10 part of those costs during the time that they were being
11 deferred.

12 So if you're doing this, say, in 2010, and
13 there were deferrals in 2008, you would look back. If the
14 utility's authorized return on equity was 10 percent and
15 they earn ten and a half percent without recovering those
16 costs, then they would not be allowed to recover them,
17 because they would have effectively earned their rate of
18 return.

19 Those are our two basic proposals. As
20 Ms. Vuylsteke said, we do endorse the comments of OPC and
21 the changes in the language that they proposed. We think
22 those all make sense and would improve the rule. And with
23 that, I will stop.

24 JUDGE DALE: Chairman, do you have any
25 questions?

1 QUESTIONS BY CHAIRMAN DAVIS:

2 Q. Good afternoon, Mr. Brubaker.

3 A. Good afternoon, sir.

4 Q. Okay. Would you apply this earnings
5 test -- would it start one dollar above their allowed ROE?
6 Would you put some basis points on top of there like
7 Mr. Trippensee did? What do you think?

8 A. Well, I'm thinking Mr. Trippensee addressed
9 the question of when you would go for a complaint.

10 Q. Okay. When you would go for a complaint?

11 A. Right.

12 Q. Okay. So you don't file a complaint until,
13 you know you've got 100 or 150 basis points?

14 A. I think you would look at the numbers and
15 you'd look at the circumstances and whether you had a
16 one-time event that caused earnings to be high, whether
17 you expected the level of earnings to continue into the
18 future without some compensation. So I don't know that I
19 could set a number or totally define the circumstances. I
20 think you have to apply judgment when you do that.

21 Q. Okay. Let me ask you this: We've heard
22 some other proposals about having some, quote, skin in the
23 game, but you're recommending a ceiling. If there's going
24 to be a ceiling, shouldn't there be a floor as well?

25 A. I don't think so, because we're talking

1 about the ceiling, or a number, an earnings number that
2 would only be driven by the amount of money collected in
3 the ECRM. In other words, utility could still earn an
4 excess, but it just couldn't keep the -- it couldn't keep
5 the ECRM dollars to the extent that it caused it to earn
6 in excess.

7 Q. Okay. Well, you obviously may not have had
8 an opportunity to read the online edition of the St. Louis
9 Post Dispatch today, but there is a story posted at 11:14
10 this morning citing Gary Rainwater as saying that the
11 company's earnings per share are below expectations and
12 that they're going to be negatively impacted by rising
13 costs in investments and regulated business. Current rate
14 levels are not, quote, sufficient to recover our existing
15 costs. That's according to Mr. Rainwater.

16 So let's say you have -- let's say that
17 hypothetically speaking that is the situation. If you
18 have a proposal that gives someone like AmerenUE some,
19 quote, skin in the game, should there -- would you
20 consider a floor where, you know, if they're not earning,
21 you know, 9 percent return on equity, then they get 100
22 percent of their cost recovery while they're filing their
23 rate case?

24 A. You know, I'm open to considering a whole
25 lot of things. I think having things be symmetrical or

1 bilateral, go both directions, makes some sense. We've
2 proposed that on the fuel adjustment clause, up, down, you
3 get to keep some, you have to eat some on the other side.
4 So that's not beyond what I think is reasonable. Again,
5 the devil's in the details and the complexities and what
6 all is part of that program or process, but I'm open to
7 that.

8 Q. Okay. Mr. Brubaker, who are the members of
9 the Missouri Industrial Energy Consumers Group again? Can
10 you list those people off for me?

11 A. I'll get as many as I can. Anheuser Busch,
12 Boeing, Chrysler, General Motors, Monsanto, Pfizer, Doe
13 Run. A couple I can think of but can't bring to mind the
14 exact names. That's the extent of my memory at the
15 moment, so -- there are more than that. Ms. Vuylsteke can
16 probably fill in, or I just flunked the test, whichever
17 way you're going.

18 Q. Okay.

19 A. Oh, Explorer Pipeline Company comes to
20 mind. Enbridge Pipeline Company. There's some others.
21 If I sit here long enough, I'll think of the rest of them.

22 CHAIRMAN DAVIS: No further questions,
23 Mr. Brubaker. Thank you.

24 JUDGE DALE: Commissioner Jarrett?

25 COMMISSIONER JARRETT: No questions. Thank

1 you.

2 JUDGE DALE: Commissioner Appling?

3 COMMISSIONER APPLING: No questions. Thank
4 you.

5 JUDGE DALE: Thank you, Mr. Brubaker.

6 MR. Brubaker: Thank you.

7 JUDGE DALE: By my list, all parties who
8 wanted to testify have testified. Is there anyone else
9 who wishes to testify on this rule?

10 As we previously discussed, we will not be
11 adjourning at this time. This hearing will adjourn at
12 midnight tomorrow night so that additional testimony if
13 anyone cares to file it may be filed until midnight
14 tomorrow night. Is there any other business that I must
15 attend to before we go off the record?

16 We are now off the record. Thank you.

17 WHEREUPON, the public hearing in this case
18 was concluded.

19

20

21

22

23

24

25

1	EXHIBITS INDEX	
2		MARKED
3	EXHIBIT NO. 1	
4	Prepared Remarks of Staff	9
5	EXHIBIT NO. 2	
6	Prepared Remarks of Warren Wood	54
7	EXHIBIT NO. 3	
8	Prepared Remarks of Mark C. Birk	71
9	EXHIBIT NO. 4	
10	Prepared Remarks of Russell Trippensee	84
11	EXHIBIT NO. 5	
12	Reply Comments of the Missouri Industrial	
13	Energy Consumers	141
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3 COUNTY OF COLE) ss.

4 I, Kellene K. Feddersen, Certified
5 Shorthand Reporter with the firm of Midwest Litigation
6 Services, and Notary Public within and for the State of
7 Missouri, do hereby certify that I was personally present
8 at the proceedings had in the above-entitled cause at the
9 time and place set forth in the caption sheet thereof;
10 that I then and there took down in Stenotype the
11 proceedings had; and that the foregoing is a full, true
12 and correct transcript of such Stenotype notes so made at
13 such time and place.

14 Given at my office in the City of
15 Jefferson, County of Cole, State of Missouri.

16

17 Kellene K. Feddersen, RPR, CSR, CCR
18 Notary Public (County of Cole)
My commission expires March 28, 2009.

19

20

21

22

23

24

25

